

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals
for the District of Columbia Circuit

JOINT APPENDIX FILED AUG 1 1963

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

CLERK

Paulson

No. 17,813

847

HARRY EDELL,

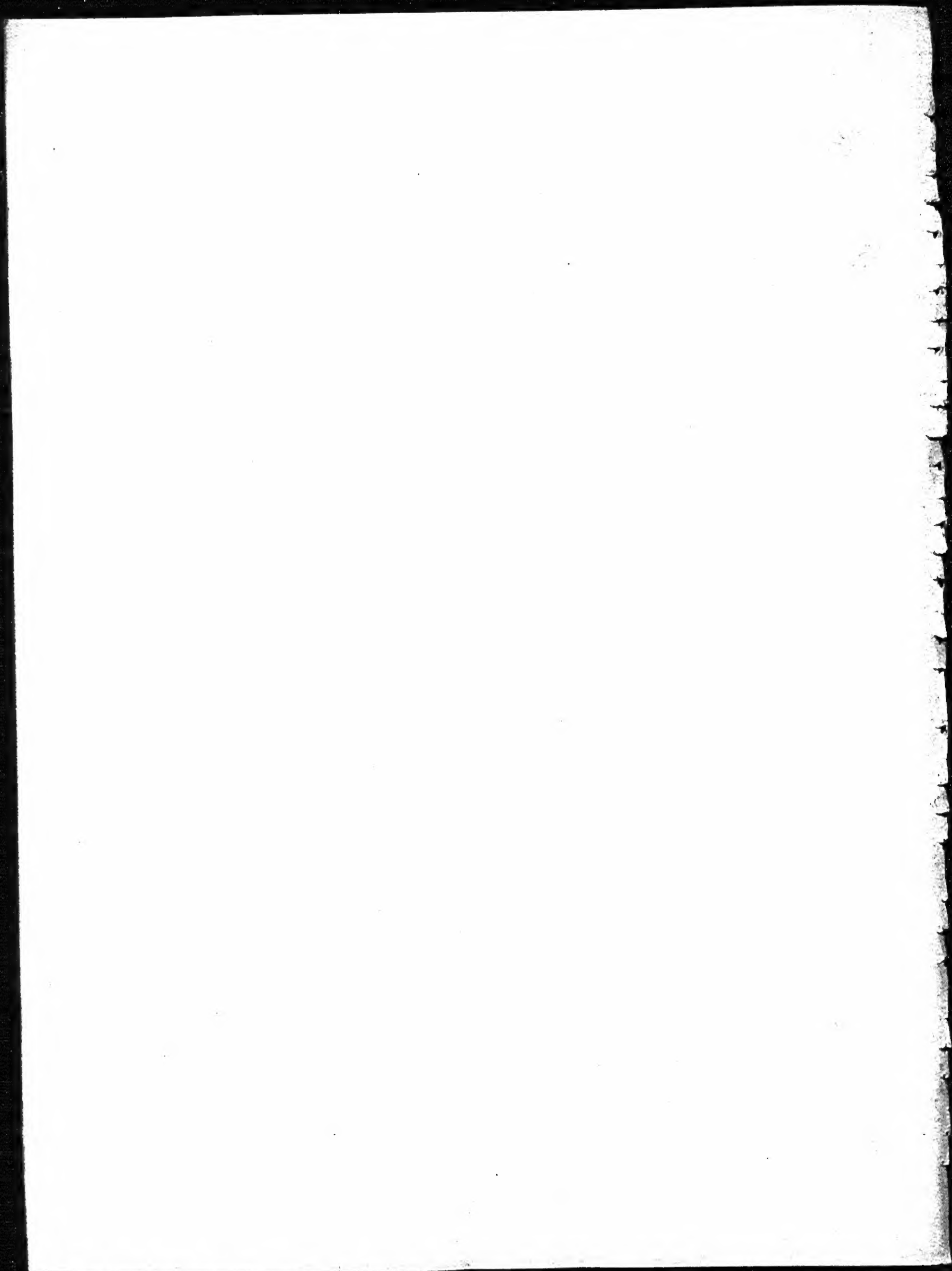
Appellant,

v.

WILLIAM J. CASEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

Appellant,

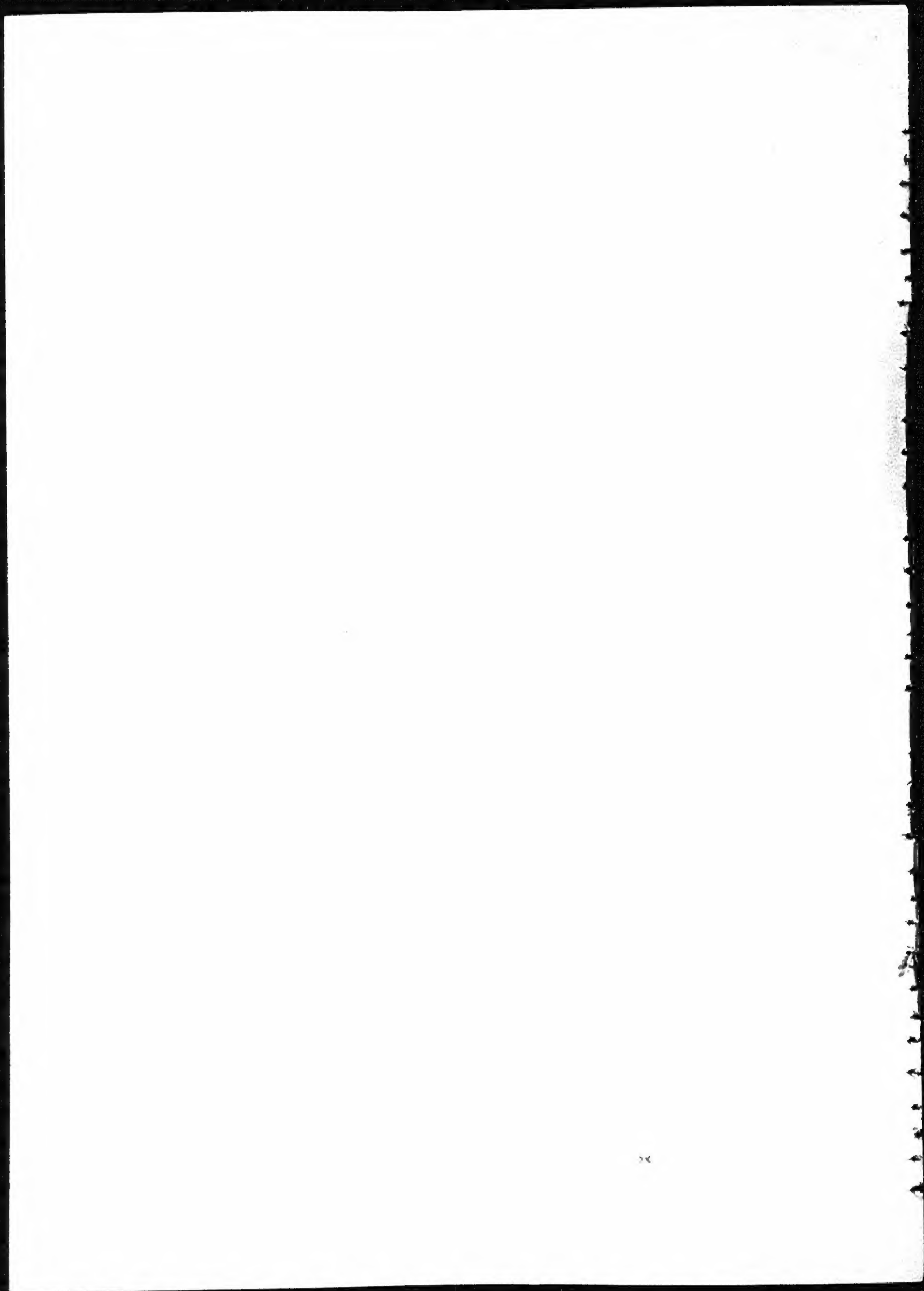
v.

WILLIAM J. CASEY,

Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOINT APPENDIX



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JOINT APPENDIX

[Filed Feb. 26, 1960]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILLIAM J. CASEY
122 East 42nd Street
New York, New York

Plaintiff

v.

HARRY EDELL
c/o University Club
1135 16th Street, N. W.
Washington 6, D. C.

Defendant

CIVIL ACTION NO. 2788-59

COMPLAINT FOR ATTORNEY'S FEES

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of \$3,000.

2. On or about July 28, 1954, the defendant retained and employed the plaintiff, who was a duly licensed and practicing lawyer, as his attorney to take all necessary and proper action to settle certain income tax and renegotiation disputes then pending with the United States of America, and contracted and agreed to pay certain attorney's fees to the plaintiff on the basis of the results achieved by him. A copy of such fee and retainer agreements is attached hereto, marked Plaintiff's Exhibit "A", and is incorporated herein by reference.

3. Pursuant to such retainer agreement, the plaintiff obtained for the defendant a final settlement of his renegotiation liabilities on or about February, 1959, by means of a decision of the Tax Court of the United States, and of his income tax liabilities by a settlement which was effected with the Internal Revenue Service in New York. At the request of the defendant, payment of attorney's fees for such services

was deferred until the tax deficiency had been settled, which occurred on or about the date above set forth.

4. As a result of the plaintiff's rendition of legal services in accordance with the said retainer agreement, the defendant became and is liable to him for attorney's fees in the following amounts:

- (a) In the renegotiation case, the difference between \$183,000 (the best offer made by the Department of Justice) and \$150,000 (determined to be excess profits by the Tax Court) represents a saving of \$33,000. Plaintiff is entitled to a fee of 30% of such saving, or \$9,900.
- (b) Total tax savings for the years 1943, 1944, and 1945 over the amount of deficiency asserted by the Government amounted to \$28,712.67, of which the plaintiff is entitled to 30% as attorney's fees, or \$8,613.81.
- (c) Unreimbursed disbursements made by the plaintiff on behalf of the defendant totaled \$1,021.95.

5. The defendant is indebted to the plaintiff in the sum of subparagraphs (a), (b), and (c) of Paragraph 4 above, amounting to \$19,535.76, minus \$2,500 paid by him as a retainer fee, leaving a net balance owing of \$17,035.76, which defendant has failed and refused to pay despite demands made upon him for the payment thereof.

WHEREFORE, plaintiff demands judgment of the defendant in the sum of \$17,035.76, together with interest and costs.

/s/ William J. Casey,
Plaintiff

DANZANSKY & DICKEY

By /s/ Raymond R. Dickey

/s/ Marshall E. Miller

COUNSEL FOR PLAINTIFF

STATE OF NEW YORK)
COUNTY OF) ss:

WILLIAM J. CASEY, being duly sworn, says that he has read the foregoing Complaint for Attorney's Fees subscribed by him, that he understands the contents thereof, and that the matters and things therein stated he verily believes to be true.

/s/ William J. Casey

[JURAT - Dated Oct. 2, 1959]

PLAINTIFF'S EXHIBIT "A"

New York, N. Y.
July 28, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my attorney to take all steps, proceedings and actions necessary, or that you may deem proper to settle my income tax disputes currently pending with the United States Government.

I hereby tender the sum of \$2,500.00, which is to be a minimum fee for your services. I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement, together with such costs as may be awarded in any action instituted by you on my behalf concerning tax deficiencies assessed for the calendar years 1943, 1944, 1945, 1946, and 1947, and any recovery made on a refund claim to be filed with respect to a tax paid on a sum of \$121,200 received in 1952 in settlement of litigation in California. It is understood and agreed that, in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount repaid by me

to the United States Government as a result of renegotiation and that you will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund.

It is further understood that the \$2,500.00 paid to you now will, in no case, be returned to me, but, in the event of a settlement, it will be used to reduce the contingency fee.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.

Dated: New York, N. Y., July 28, 1954

/s/ William J. Casey

PLAINTIFF'S EXHIBIT "A" (Continued)

New York, N. Y.
August 6, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my lawful attorney to take all steps, proceedings and actions necessary, or that you may deem proper in the settlement of my dispute with the Department of Justice concerning the Renegotiation Act of 1951, as amended.

I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the Justice Department offer of One Hundred Eighty-Three Thousand Dollars (\$183,000.00) and the final settlement of the dispute. It is understood that your compensation is limited to the amount stipulated in this agreement.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.

Dated: New York, N. Y., August 6, 1954

/s/ William J. Casey

[Filed March 21, 1960]

ANSWER OF DEFENDANT

First Defense

The Complaint fails to state a claim against this defendant upon which relief may be granted.

Second Defense

The contract entered into between plaintiff and defendant related to the dispute over income taxes for the years 1943, 1944, 1945, 1946 and 1947 and the renegotiation case referred to therein. Defendant says that plaintiff breached said contract in that plaintiff failed to represent the defendant with reference to said dispute for income taxes for the years 1946 and 1947, and that plaintiff only partially represented the defendant with reference to said dispute for income taxes for the years 1943, 1944 and 1945; that the final settlement for the income tax liability of defendant for all of said years from 1943 - 1947, inclusive, was made by counsel other than plaintiff, whom defendant was obliged to employ to complete said matters; that defendant says, therefore, that said contract is void and of no force and effect.

Third Defense

Answering the allegations of the Complaint, the defendant says as follows:

1. Defendant is not required to answer Paragraph 1.
2. Defendant admits that he entered into the contract referred to as Plaintiff's Exhibit A, except that the figure "\$183,000.00" stated therein was intended by the parties to be and should be "\$138,000.00" and defendant therefore denies that the figure \$183,000.00 as stated in said Exhibit A is correct; that for greater certainty as to the terms and legal effect of said contract, defendant refers to Plaintiff's Exhibit A. Defendant admits that plaintiff is a duly licensed and practicing lawyer. All other allegations of this paragraph are denied.
3. Defendant denies all of the allegations of Paragraph 3. Further

answering, defendant says that plaintiff represented him in the renegotiation case and did some work with reference to the dispute over income taxes for the years 1943, 1944 and 1945, but by reason of the manner in which the plaintiff handled the aforesaid matters, and because of certain stipulations which the plaintiff entered into with the United States Government, without prior consultation with, or authority from, the defendant, to so stipulate, the liability of the defendant as thus determined and the payments defendant was obligated to make and did make pursuant thereto to the United States Government in the renegotiation case and for income taxes for the years 1943-47, inclusive, were increased considerably over what the defendant would have paid had he received from the plaintiff the measure of services called for by said contract.

4 and 5. Defendant denies that plaintiff rendered legal services to him in accordance with said contract. Further, defendant denies all of the allegations of Paragraphs 4 and 5, and denies that he is indebted to plaintiff for any legal services or otherwise. Defendant says that plaintiff, by his having breached the aforesaid contract, rendered the same void and of no force and effect.

WHEREFORE, defendant prays that the Complaint be dismissed with costs to him.

/s/ Clarence G. Pechacek

* * *

Attorney for Defendant

Defendant demands a trial by jury.

/s/ Clarence G. Pechacek

[Certificate of Service]

EXCERPTS FROM THE DEPOSITION OF
WILLIAM J. CASEY

Washington, D. C.
Thursday, June 23, 1960

* * * * *

Thereupon

WILLIAM J. CASEY

a witness of lawful age, was duly sworn by the notary public, and, being examined by counsel, testified as follows:

DIRECT EXAMINATION

BY MR. BERLOW:

Q. Would you state your full name for the record? A. William J. Casey.

* * * * *

Q. Was there an agreement dated July 15th that you entered into? A. Well, I can't recall the date, but the facts are that Mr. Edell pressed me to take this case, his case, and I was aware he had difficulty with his other lawyers and he came out to my home one Saturday and talked to me at great length and I agreed I'd go into it on the basis of a \$2500 retainer.

MR. DICKEY: Would you speak a little louder, please?

THE WITNESS: A \$2500 retainer plus 30 per cent of what I could save for him. And we did have an agreement along those lines which embodied the tax problem and the renegotiation problem. And then it occurred to me that I had to file the contingency agreement with the Internal Revenue Service under the rules and they wanted to see a

substantial retainer, so as not to confuse them, I recommended Mr. Edell that I was taking it on a quoted basis on his figures that we break it into two agreements: One, a straight 30 per cent on the renegotiation, and the other \$2500 plus 30 per cent of the saving on the tax. There was no requirement to file the renegotiation. I wanted to accept the retainer on the tax one. That is how there was a change, and we did change the agreement. There was a predecessor agreement

which superceded that. I don't have any copies of it.

* * * * *

9 Q. Knowing all of this that you testified, there did come a time when you negotiated this agreement with Mr. Edell which was finally reduced to the form of a written agreement for the first time in this document which has been marked Plaintiff's Exhibit No. 1?

A. Well, that is right. That was not for the first time. I explained there was a previous document which said the same thing but the renegotiation and income tax were in one document and they were separated.

Q. That first document, did you retain a copy of that? A. I don't think so. We called that agreement off and entered into a new one. And it was destroyed, I think. I think so.

Q. Have you made a search for copies of it? A. I looked through the files.

Q. And you have been unable to find it? A. Yes.

10 Q. The reason you stated for the alteration or destruction of the original agreement and entering into the new agreement was the original agreement contravened the rules of the Internal Revenue Department?

A. No; it didn't contravene the rules. It clouded up the judgment of the committee on practice as to whether an adequate retainer had been received on a tax matter and I thought it best to separate it.

Q. Insofar as your understanding with Mr. Edell was concerned, it was understood the \$2500 cash payment to you was a retainer both for the renegotiation case and the related Internal Revenue matter? A. I don't think that is the case at all.

Q. In your original discussion -- A. In the original discussion I had the \$2500 retainer, 30 per cent of the savings, and then I decided I wanted them separated. It didn't make any substantial difference in the terms of the agreement. We agreed they be separated. The original agreement was superceded by two separate agreements.

Q. At the very beginning it was understood the \$2500 was a retainer for both the matters? A. Yes; but that was superceded.

Q. I understand that is your testimony. Prior to its being superceded your attention was called to the rules of practice of the Internal Revenue Bureau at that time? A. Yes.

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Q. After consulting those rules you then reduced it to the two separate agreements? A. I wanted the retainer to apply to the Internal Revenue matter. They like to have you take a substantial retainer, and not on a contingent basis. I thought coupling the thing clouded the relationship in terms of those rules.

Q. In what way did it cloud it? A. Because it wasn't clear what the retainer applied to. I said I had to have a substantial retainer if I was going to take the tax matter. I said, "I don't want to ask for more money. I will be willing to take the renegotiation without a retainer. But I want the retainer on the tax matter."

Q. And that was agreeable to Mr. Edell? A. Yes; it was.

Q. It was your view if the retainer was equally applicable to both the renegotiation matter and the tax matter it would be inadequate? A. No; it wasn't my view. I didn't know, but I felt it better to make it clear the retainer was applicable to the Internal Revenue matter.

Q. You thought there might be a likelihood someone might consider it inadequate if it was applicable to both? A. That's right.

12

Q. And that was explained to Mr. Edell? A. Yes; it was.

Q. And that was satisfactory to him? A. Yes. You see, it made no substantial difference.

Q. Do you recall in the first agreement a copy of which we do not have, whether reference was made to the Justice Department offer in their renegotiation matter? A. Yes; it was based on the Justice Department renegotiation matter.

Q. Do you recall in that agreement what figure was used?

A. I don't recall.

Q. Do you know if it was \$138,000? A. I don't recall. I don't know.

MR. DICKEY: Wait a minute. He asked if you recall whether it was one or the other.

THE WITNESS: I don't recall what it was. I recall it was a figure which we understood to be the Justice Department offer. There were only two figures. I don't recall what it was. I imagine it was one or the other.

BY MR. BERLOW:

Q. It wasn't entirely different such as \$240,000? A. I don't know what it would be based on.

13 Q. It was either \$138,000 or \$139,000? A. Well, unless there was some other typographical matter. The intent was it would be the figure the Justice Department offered. That was the deal, and the agreements were prepared on that basis.

Q. When you speak of the Justice Department offer, are you speaking of the amount the Justice Department had proposed Mr. Edell was to pay in this renegotiation matter or the amount that the payment was to be based upon as being excess profits? A. I am talking about the amount the Justice Department set forth in the offer it made, the counter-offer it made to Mr. Pittman in response to his original offer of settlement and as referred to in the correspondence of Mr. Amann and in the papers, the schedules submitted by the Justice Department expressing the offer they would settle on the basis of excess of profits, of \$183,000.

Q. You are referring to the correspondence which is marked as what? You ought to look through there and tell me which of those exhibits are the ones you are referring to. A. I am referring to Paragraph 3 of Mr. Burger's letter to Pittman and Roberts. It says:

14 "We herewith propose a counter-offer under the terms of which the parties would agree to stipulate to the Tax Court that the partnership's excessive profits for the calendar years 1943, 1944, and 1945 were in the amounts of \$12,000, \$57,000 and \$114,000 respectively."

These numbers add up to \$183,000.

Q. And it was based on that letter, or other letters, or solely this letter? A. It was based on what we knew the Justice Department

had offered. It was expressed in that letter, expressed in subsequent schedules that had been prepared which Mr. Edell turned over to me or Mr. Amann turned over to me.

* * * * *

- 18 Q. After the agreement was executed then you wrote the letter of August 6th, which is marked Plaintiff's Exhibit No. 2 for identification, is that correct? A. Yes. I found out that that figure had been transposed or otherwise erroneously stated, \$138,000. I called Mr. Edell and told him about that and told him I'd have to make up a corrected agreement reflecting the Justice Department offer which was the basis under which we had discussed and entered into our understanding. I then checked in to see what had been the genesis of this other figure. Mr. Edell had the other figure. He seemed to think the figure \$138,000 had some relevancy. Then we sent him a corrected copy of the agreement with this letter explaining the difference. He subsequently came back and delivered the corrected agreement to me in my office executed
- 19 to supercede the original agreement which contained an erroneous figure.

Q. The agreements which you are referring to as being the corrected agreements are the ones attached to your complaint in this case? A. That is right.

Q. Now, there was a discussion as to the rules of the Internal Revenue Bureau? A. That preceded.

Q. The execution of the agreement marked as Plaintiff's Exhibit No. 1? A. Well, it preceded the agreement which carried the figure of \$138,000.

Q. And there was no further discussion as to that aspect of your fee agreement thereafter? A. Well, because we agreed to replace the original agreement with two agreements and it was in doing that that it came to our attention a mistake had been made in the figure. The figure was not the figure of the Justice Department's offer.

Q. Now there came a time when you supplemented the agreements

dated July 28, 1954; do you recall that? A. Yes; a couple of supplements.

20 Q. I show you this document dated August 17, 1954, and ask you if that is the first or second of the two supplements? A. Well, that is the first supplement.

Q. Do you have the second supplement? A. Yes; the second relates to interest.

* * * * *

Q. Now, referring specifically to the letter which is marked Defendant's Exhibit No. 1, I ask you to read the second paragraph which is marked with Arabic numeral 2, and tell me what conversation preceded the execution of that agreement in relation to that paragraph.

21 A. Well, there was a proposed settlement. Mr. Pittman had proposed a settlement. The Justice Department proposed another settlement. I proceeded to hold conversation the Justice Department and Renegotiation Board looking toward a more favorable settlement than the settlement I had taken as my starting point which was \$183,000. Mr. Edell apparently asked me to agree I would not make any further settlement without his approval.

Q. And you did agree to that? A. Yes; I did agree to that.

* * * * *

22 BY MR. BERLOW:

Q. The figure of \$183,000, the compromise figure, was any allowance made to your knowledge for expenses incurred to Mr. Edell? A. Yes; there was.

23 Q. What was that figure? A. I don't have it without going to the record, but it varied with each year. The proposal was made upon an amount they were willing to accept as expenses and an amount they were willing to accept as a gross income, and compensation to which Mr. Edell's services entitled him, and the settlement they offered was a composite of the three elements in that calculation the expenses were proposed to be, I think they proposed \$12,000 for one year, \$20,000 for another year, and \$25,000 for another year. What you are trying to

get at is whether at that time in their proposal they were willing to go along on more than \$14,000. The answer to that is yes, but Mr. Edell was not willing to take the settlement because the settlement was made up of a variety of things of which there was only one element. Do you want the exact figures on that?

Q. Yes; I do, if you have them. A. Well, I have them here.

Q. Take your time. A. The first year the estimated expenses were \$15,000, the second year they were \$20,000, and the third year they were \$25,000. But of course, allowing those expenses they came up with a total expense, a total excessive profits of \$183,000.

Q. In their figure in the proposed compromise, what was the other element you mentioned? A. The gross sales commissions. The breakdown of the commission between negotiable and unnegotiable business.

* * * * *

28

Q. On the Sokolow case, that was disposed of one way or the other by Mr. Benedict or yourself? A. Yes.

Q. Were you paid for that? A. Yes.

Q. Were you paid in full for that? A. I think so.

Q. There is no additional claim being made against Mr. Edell in connection with that matter at all, is there? A. Doesn't that question answer itself?

Q. Do you have any claim you intend to insert at some future time? A. I am not thinking of it now. You just brought the matter to my attention. I know Mr. Edell did pay me. He sent me a check of, I don't know if it was \$500, \$1,000, it might have been two \$500 checks.

Q. Did that represent compensation in full? A. I think so. You are raising the question now.

Q. I am asking you, do you have any intention of inserting a claim in connection with that matter? A. No.

* * * * *

38 Q. Then the case was set in Washington two weeks later. In that two weeks, did you interview any of the five witnesses we are talking about? A. I didn't interview any of them until the case was set in Washington.

* * * * *

50 Q. What did you, Mr. Casey, do in reference to '46 and '47?
A. I didn't do anything in reference to '46 and '47 because we never had '46 and '47. We never had the returns and I was asked by Mr. Edell or one of his agents, the people were handling his tax returns currently, we had various conversations with the members of the firm and we bowed out of the '46 and '47 tax return. There was no claim for services at Mr. Edell's request or the request of his agent, and we confined ourselves to the tax adjustment for the years in which we had the renegotiation case.

* * * * *

55 Q. Now there came a time when you were requesting payment by Mr. Edell of the fee owed to you, that you sent calculations demonstrated by these savings effected by you. Isn't it a fact the entire savings effected by you resulted from the stipulation his expenses for the year in question were \$14,000? A. That is right. It resulted entirely from the fact we were able to get more expenses allowed by the Internal Revenue people than they were able to allow in the original deficiency. The other issue was whether they would recognize it before the partnership between Mr. Edell and his brother.

56 Q. In the original expenses the Internal Revenue made no allowances for the expenses? A. That is right.

Q. So the only saving resulted in the stipulation and in the renegotiation case? A. Unless you want to add a saving of 25 per cent fraud penalty.

Q. But no claim has been made for that in this case? A. No, but if we hadn't settled, they told us they were going to impose the fraud penalty.

Q. That is not the basis of your charge? A. No; but the basis is the agreement of 30 per cent between the savings and the amount actually paid.

Q. And you made no deduction for the fact you did not work in '46 and '47 other than the fact you made no charge for the savings, if any, effected in those years? A. This was a contingent agreement based on the years we worked on. We would have made more money if we insisted on handling the '46 and '47.

* * * * *

56-A

BY MR. BERLOW:

Q. Could you tell me how Mr. Edell paid to the Government with the result of renegotiation? Does this refresh your recollection it was approximately \$110,000? A. Let me see what that says. I know what it is intended to mean. The adjustment was made as set forth in my letter. Well, what that means is we would not claim credit for any tax, any reduction in the tax liability based on the profit which would be taken back by the renegotiation.

Q. And you explained that to him prior to the time the agreement was entered into? A. Oh, yes. That was all discussed.

Q. In other words, it was not that the amount paid in the renegotiation was to be deducted from the deficiency assessed? A. No.

Q. Do you recall what the deficiency assessed was? A. Yes.

Q. Does \$177,994.24 refresh your recollection? A. By the way, I would like to say that before calculation was made and sent to Mr. Edell on long sheets of paper and Mr. Williams and his associates spend some time up in our office and we went over the calculation and they informed us they agreed they were correct. Yes; the deficiency amount, the original deficiency came to \$177,994.24 according to these figures.

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Q. What was the deficiency finally assessed? A. The deficiency finally assessed was, I think, I think it was \$14,000 for '43, \$21,000 for '44, and for some reason I haven't got the '45 figure here.

Q. Do you know what they are? A. I don't.

Q. I have it written down here on a piece of scratch paper. It was \$97,898 and my recollection is the last deficiency was in the sixties,

so if you had that added to the two you have just given -- A. Yes; that is right.

Q. If you subtract what he paid on the renegotiation which is \$111,000 -- A. Obviously, you don't do that.

Q. It is not obvious to me because it says the deficiency proposed by the United States Government will be reduced by any amount repaid to me as a result of any renegotiation. A. That money will be taken out of income for purposes of computing this thing. That was the agreement.

Q. So this language I read you is not clear on that point at all, is it? A. It is not clear. It doesn't seem to be clear.

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Q. Did you draw that agreement? A. I suppose so.

Q. Well, that is your office typewriter, I guess. A. Oh, I drew it. There is no question it was done in our office.

Q. Do you know whether or not Mr. Edell took this agreement to any other attorney to discuss it with him? A. I don't know.

60

Q. Did he ever say he done this? A. No.

Q. To your knowledge he was not represented by the other counsel at the time the agreement was executed? A. No.

Q. You were his only counsel? A. As far as I know.

Q. You were the only counsel as far as you know? A. Yes.

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PRAECIPEUNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

the 20th day of November, 1962

WILLIAM J. CASEY,

Plaintiff

v.

HARRY EDELL,

Defendant

Civil Action No. 2788-59

The Clerk of said Court will enter the demand for jury trial
as withdrawn.

/s/ Ralph F. Berlow

* * *

CONSENT:

/s/ Harry Edell

Attorney for Defendant

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D.C.
November 20, 1962

The above-entitled matter came on for hearing before The
HONORABLE BURNITA SHELTON MATTHEWS, a United States
District Judge, at 10:00 A.M.

APPEARANCES:

For the Plaintiff:

Raymond R. Dickey, Esquire
Marshall E. Miller, Esquire

For the Defendant:

Ralph F. Berlow, Esquire

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3 THE DEPUTY CLERK: The case of William J. Casey versus
Harry Edell, Civil Action No. 2788-59.

* * * * *

20 WILLIAM J. CASEY

having been called as a witness in his own behalf, and having been duly sworn, took the stand, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. Will you state to the Court your name, Mr. Casey?

A. William Casey.

Q. Where do you live? A. Roslyn Harbor, New York.

Q. Your profession is that of an attorney? A. Yes, it is.

21 Q. Will you tell the Court what your educational and professional qualifications consist of, including any publications or areas of special study? A. I graduated from Fordham University, Saint Johns Law School, and I was admitted to the Bar in the New York State in 1938. I have practiced law since 1938, except for three years during the war. I am a partner in a law firm in New York now. The name of our firm is Hall, Casey, Dickler, Howley & Brady and the law firm of Scrivener, Hall and Casey in Washington.

I have practiced primarily in the tax and financial and business matters. I have written various articles and books largely in the field of taxation and excess profits and renegotiation. I have lectured before many Bar Associations, universities, institutes, and again primarily in the field of taxation. Then I have practiced actively in those fields and have since 1938.

Q. Have you written a book, How to Handle Renegotiations, by William J. Casey, and C. Richard Gunther? A. Yes, I wrote that book with Mr. Gunther who is an accountant, he handled the accounting aspect and I handled the legal aspect. This was on the Korean War Renegotiation Act and was published sometime around 1952.

Q. Have you also published or been associated or worked with -- A. This is a set of legal arrangements with tax annotations which

22 I have prepared and keep up to date and publish. I have written them but they were published by an organization that publishes them.

Q. Have you also published or had published a book in your behalf by an institute for business planning of real estate investment program, by William J. Casey? A. Yes, I have written various things in the tax aspect of real estate and that is one of them.

Q. Mr. Casey, when did you first come into professional contact with the defendant, Mr. Edell? A. It was in December of 1953.

Q. Would you describe to the Court the circumstances and the situation as it existed at that time? A. Yes, I was asked to meet in Washington in the Law Offices of Danzansky and Dickey, a Washington firm of whom I have been called in as a consultant on several matters previously, to meet a man who had renegotiation and tax troubles.

When I went there, it turned out to be Mr. Harry E. Edell. Mr. Edell and Mr. Dickey were there and a gentleman named, I think it was McCormick, who I hadn't met before, was there. And Mr. Edell wanted to talk about his troubles with me.

Q. Did he talk to you about his troubles? A. Yes.

23 Q. Will you tell the Court what his troubles at that time consisted of? A. Mr. Edell told me that during the years of World War II he had been a manufacturer's representative or manufacturer's agent, representing a number of small companies who were desirous of getting war work and that he had acted for them on the basis of getting as his compensation a percentage of the sales, that they got out of his activities.

And at the end of World War II the World War Contracts Price Adjustment Board which administered the Renegotiation Act, had investigated his performance and had determined that he had received \$281,000 of excessive profits and had demanded that this money be returned to the United States Government.

This had occurred sometime in 1947. The Justice Department had moved to obtain a judgment against him in the amount of \$281,000, and in 1949 he had filed a petition with the United States Tax Court contesting this determination of excessive profits and this case had been pending since 1949.

24 He stated that he felt he wasn't getting anywhere with it, he felt he should not be subject to the Renegotiation law. He said this problem had upset his mind and his financial affairs and that he had posted, in order to stop the United States Government from moving against him, he had posted about a quarter of a million dollars worth of securities in escrow with the American Security and Trust Company in Washington. And this money was to secure the amount which the United States Government claimed from him, and he was incurring interest charges on the liability and he was going through a divorce proceeding at the time when this was tying up his property.

In fact his property was tied up and made it difficult for him to work out his divorce. He had just had a lot of problems and I asked him whether he was represented by counsel and he said he had been represented by a firm in Washington known as Pittman and Roberts, and that he had subsequently also called in a firm in New York called Lowenstein, Pitchard, Amann and Parr. And I knew the Pittman and Roberts firm by reputation and I said that is a good law firm. I knew Mr. Amann of the Lowenstein firm in New York and I told him I thought he was in good hands. And he went on to say nevertheless he had understood that I was an expert in renegotiation business and tax business and that he would like to have me take a look at his situation to see if I had any advice as to how it might be brought to a conclusion more expeditiously.

Q. This is still now your first conversation with Mr. Edell in 1950 -- A. This is in 1953.

25 Q. 1953. A. 1953, December.

Q. 1953 December ? A. Yes.

Q. This was the first conference with Mr. Edell? I will ask you whether or not there was any discussion of claims by the Internal Revenue for income tax? A. Yes.

Q. Well, how did he describe it or relate it? A. Yes, this is part of the picture. In addition to the \$281,000 excessive profit that the Government claimed, the Government had his tax returns for the years 43, 44, 45, and some subsequent years -- 46 and 47, under review and they were claiming additional taxes from him of some \$200,000, and the tax problem and the renegotiation problems were closely entwined.

Q. Would you tell us how they were entwined? A. Well they were entwined because if the Government succeeded in recovering excessive profits that would reduce his income for those years and produce an automatic reduction of his income tax liability.

And also because somewhat the same issues were involved, the question of his ability to substantiate the expenses he claimed that were involved in both the tax case and the renegotiation case.

26 Q. Will you explain to me now if in the renegotiation case it were found he had excessive profits what would he be required to do with the profits determined to be excessive? What would he have to do with that sum of money? A. He would have to pay that back to the United States Government and they would give him a credit for the income tax and the amount he paid back on the renegotiation.

Q. In other words, he would have paid income tax on a higher sum which he claimed as income which would be reduced if he had to repay a portion of the excessive profits? A. Yes.

Q. So then it would be a matter of computation only on that aspect? A. That didn't go to the liability. That goes to the adjustment. The Government would give him back some of the money; they would accept the liability by repaying him some of the money he paid in taxes.

Q. Will you tell us what next occurred after your first conversation with Mr. Edell, if you have covered that conversation fully? A. Yes, that is about it. I went back to New York and then the following,

sometime yearly in 1954, Mr. Dickey sent me some papers dealing with Mr. Edell's problems which in a letter he told me Mr. Edell had left with him and had asked him to send on to me.

27 Q. What did those papers in a general way consist of? A. Well I really can't tell exactly; I don't remember exactly. They were, I guess, correspondence, and papers that had been prepared to show what the Department of Justice and what were the facts of his war time experience. The papers calculated to give me on paper a picture of the case in which Mr. Edell was involved.

Q. Had you at that time accepted employment as counsel for Mr. Edell? A. No, I had not formally accepted employment as counsel and I helped, tried to help Mr. Edell on a rather informal basis for some time before I accepted employment as his counsel.

The next thing I did Mr. Edell had asked me -- I told Mr. Edell I couldn't advise him at all unless I sat down and talked with Mr. Amann who was on the firing line, who handled the case. And I didn't want to do that unless Mr. Amann wanted me to do it and it was in that state.

Some time in the early part of 1954 Mr. Edell arranged for me to meet with Mr. Amann and I had a meeting with Mr. Amann in New York. At that meeting Mr. Amann described the situation, described --

MR. BERLOW: Your Honor please, I would object to what Mr. Amann said as being hearsay and it should be excluded.

* * * * *

28 THE COURT: Was Mr. Edell present?

THE WITNESS: On one occasion Mr. Edell was there, on the first occasion he wasn't. I am not going to describe what Mr. Amann said really. I think Mr. Amann talked to me, that is how I got my understanding of the case and that is the next step and that is how I proceeded.

THE COURT: The witness may tell us anything that was said while Mr. Edell was present.

MR. MILLER: I do not think it is important here, Your Honor, but it might be later. This attorney was handling the matter for Mr. Edell, the client. Mr. Edell had at that time another attorney, Mr. Amann, and it seems to me the suit being for attorney's fees and services done, part of it could well be conversation he had outside of Mr. Edell's presence with his other attorneys. It goes to the merits here. It is not under the hearsay rule.

THE COURT: You went there at Mr. Edell's request, did you?

THE WITNESS: Yes, I did.

* * * * *

29 THE COURT: I will overrule the objection, but, of course, any questions asked should be kept within the scope of the authority of the New York law.

MR. MILLER: Yes.

BY MR. MILLER:

Q. What was the approximate date now we were discussing when you had a conference with Mr. Amann? A. It was sometime in March 1954.

Q. March, 1954? A. Yes.

Q. Prior to that had you had any conversation with Mr. Edell about getting together with Mr. Amann? A. Yes.

Q. About what was the date of this conversation with Mr. Edell about that? A. I told Mr. Edell in December.

Q. What was the date, approximately in 1953? A. In December -- the last week or two around Christmas of 53, somewhere in there before or after Christmas and then Mr. Edell came to my office in New York, he would write me letters and telephone me --

Q. My question is this. What directions, if any, did Mr. Edell give you about conferring with Mr. Amann and for what purpose?

30 A. Mr. Edell said he wanted me to look at his problems and said if I would advise him as to how they might be brought to a satisfactory conclusion more expeditiously.

I told him that I couldn't do that without talking to his lawyer and I was unwilling unless his lawyer wanted me to do it and asked me to do it.

And Mr. Edell kept talking to me about his problems and I told him I couldn't do anything and I didn't want to get involved, I didn't want to advise or do anything unless Mr. Amann asked me to and I couldn't do it effectively without learning from Mr. Amann where the matter stood and what his plans were and so on.

Q. What did Mr. Edell say to that? A. He said he wanted to arrange for me to meet with Mr. Amann. Mr. Amann subsequently called me up and asked for a meeting which he said Mr. Edell had asked him to do.

Q. Now I am going to ask you to tell the Court what your conversation was with Mr. Amann, keeping it at all times, including this conversation confined to any authority or direction you and Mr. Amann had from Mr. Edell for this purpose. A. Mr. Amann and I discussed the case. Mr. Amann told me how he evaluated the case and what he was trying to do about it. He told me he was engaged in settlement discussions with the Department of Justice.

31 He discussed the points of law involved in the case, and the difficulties of proving Mr. Edell's expenses and the various other things that were the factual items that were involved in the case.

Also at the same time Mr. Edell talked to me about a problem he had in releasing, getting a release of the proceeds of the sale of real estate which were tied up by the lien of the judgment which the Government had taken against him. And I discussed that with Mr. Amann and suggested a course of procedure to him as to how this \$42,000, which was owing to Mr. Edell from the sale of real estate, in which he had an interest, might be released to him.

He was anxious to get his hands on that money and I discussed that with Mr. Amann and Mr. Benedict in my office did some work on that with Mr. Amann during March, April and May of 1954.

Q. What did Mr. Amann tell you was the position of the Department of Justice regarding the problems of Mr. Edell?

A. He told me that the Department of Justice had rejected an offer of settlement which Pittman and Roberts had made.

MR. MILLER: Just a minute there is an objection.

MR. BERLOW: Your Honor, this is assuming what Mr. Amann says is not hearsay, what the Department of Justice told Mr. Amann is hearsay. I think there are documents and records which would perhaps -- the plaintiff's counsel just handed me a document which may

32 take care of it. There are documents showing what the Justice Department said and I think they should be offered in evidence rather than hearsay on them.

THE COURT: Of course, it is hearsay but hearsay is included in the conversations between the plaintiff and the attorney for the defendant and the attorney to which the defendant had referred the witness. It may go in.

THE DEPUTY CLERK: Plaintiff's Exhibit 1 for identification.
(Document marked for identification).

BY MR. MILLER:

Q. Mr. Casey, I am going to hand you a copy of a letter dated December 7, 1953 from Mr. Douglas M. Amann, the New York attorney to Mr. Warren Burger, Assistant Attorney General, Civil Division, Department of Justice, Washington 25, D.C., and ask you if this was among the documents that were discussed by you and Mr. Amann in the conversation that you are describing? A. Yes, it does. It is, and Mr. Amann showed me this document and we discussed it.

Q. Will you tell the Court what portion or what information from that letter to Mr. Burger was discussed by you and Mr. Amann?

A. He told me that Mr. Burger, the then Assistant Attorney General, had written him a letter offering to reject the offer to settle the matter

33 for \$42,000 which Mr. Edell's previous counsel, Pittman and Roberts, had submitted.

Q. Had settled what matter for \$42,000? A. The renegotiation. They proposed they would accept a finding of about \$42,000 of excess profits.

Q. \$42,000 excessive profits had been offered, tendered by Mr. Edell's counsel to the Government? A. Yes. And the Government had rejected that offer and came back with a counter offer saying that would dispose of the matter on the basis of reducing the excess profits chargeable against Mr. Edell from \$281,000 to \$183,000.

Q. \$183,000? A. Yes, as this letter states.

Q. Well, does the letter state that it is not clear to me in view of the statement in your letter, and this is a quotation from Mr. Burger's letter.

"In arriving at a proposed counter offer totalling \$183,000, the amount of expenses to be allowed to Mr. Edell as well as the profits which the partnership would retain after renegotiation are substantially in agreement with the total figures set forth in your letter of November 12, 1952."

Mr. Amann said he would like to make an appointment to speak with Mr. Prentice regarding the computations to form the basis for the
34 \$143,000 mentioned in his letter.

MR. MILLER: I would like to offer this letter in evidence. It was shown, Mr. Berlow, I believe at pre-trial.

MR. BERLOW: I have no objection.

MR. MILLER: May I hand it up to the Court?

THE COURT: Plaintiff's Exhibit 1 for identification in evidence.
(Document admitted in evidence).

THE DEPUTY CLERK: Plaintiff's Exhibit 2 marked for identification.

BY MR. MILLER:

Q. Mr. Casey, I will hand you plaintiff's Exhibit 2, which is a copy of a letter from Mr. Warren E. Burger, Assistant Attorney General, Civil Division to Pittman and Roberts, attorneys, Washington, D.C., dated December 2, 1953.

Will you examine it and tell the Court whether you discussed that document with Mr. Amann in this conversation? A. Yes, I did discuss this document with Mr. Amann and with Mr. Edell.

Q. What was said? A. What discussion was had?

Q. What did you say to him about it and what does the document say? A. The document is a letter signed by Mr. Burger, Assistant Attorney General, of the Civil Division by Mr. Hickey, Chief of the General Litigation Section, and it says on November 23, 1953, the

35 Attorney General authorized the rejection of Mr. Edell's offer totalling \$42,109.00 and authorized the proposal of a counter offer totalling \$183,000 for the three fiscal periods.

"You are hereby notified that Mr. Edell's offer has been and is hereby rejected.

"We herewith propose a counter offer under the terms of which the parties would agree to stipulate to the Tax Court that the partnership's excessive profits for the calendar years 1943, 1944, and 1945 were in the amounts of \$12,000, \$57,000, and \$114,000, respectively."

Q. What do those figures, by the way, total? A. They total \$183,000.

MR. MILLER: I offer into evidence Plaintiff's Exhibit 2 which has been exhibited to counsel.

THE WITNESS: It also goes on to talk about the way they discount the authorities on the basis on which it argues Mr. Edell was not subject to renegotiation at all. They don't place much weight on that, I might say.

MR. MILLER: I offer into evidence Plaintiff's Exhibit 2.

MR. BERLOW: I have no objection to 2.

36 THE COURT: Plaintiff's Exhibit 2 is admitted. (Plaintiff's Exhibit 2 for identification admitted into evidence).

THE DEPUTY CLERK: Plaintiff's Exhibit 3 marked for identification.

BY MR. MILLER:

Q. Mr. Casey, I will show you a copy of a letter from Mr. Amann to Mr. Edell dated February 1, 1954 with enclosure showing computations of seven pages and ask if that was discussed by you and Mr. Amann? A. Yes, it was.

Q. Can you tell us what it is please and what discussion you had? A. It is a letter to Mr. Edell in which Mr. Amann says he tried to estimate what Mr. Edell would have to pay on the basis of the Justice Department's offer to reduce the excessive profits chargeable against Mr. Edell to \$183,000 after some computations were made to give Mr. Edell credit, or permit him to make payment of \$183,000, partially in the form of a tax credit, a credit for taxes he had paid on that money.

There are attached six pages of calculations which Mr. Amann says is the best estimate he could make as to what the ultimate cash payment is that might be requested.

Q. What was the date of that letter? A. February 1, 1954.

Q. Is there a recapitulation as to the lowest offer made by the United States Government and the amount that Mr. Edell would have to pay after computation of the tax credit on the last page?

37 A. Yes, it says that the excessive profits would be \$183,000, which was the offer of the Justice Department and that is reduced by a tax credit of \$71,000, \$71,104.03.

Q. Upon the settlement offer of \$183,000 excessive profits, what would be the amount then Mr. Edell would owe after computation of tax credits? A. That would be \$111,895.97 to which then is added interest.

Q. Well what would be the corrected figure from \$183,000 after indicating, taking into consideration interest and tax credit?

A. \$137,000.

Q. \$137,000 even? A. \$526,60.

Q. I am sorry, would you read that last figure again?

A. \$137,526.60.

MR. MILLER: I will offer Plaintiff's 3, is that?

THE WITNESS: It is marked 3, yes, sir.

MR. MILLER: Plaintiff's 3.

THE COURT: Plaintiff's 3 for identification is admitted.

38 (Plaintiff's Exhibit 3 for identification is admitted in evidence).

BY MR. MILLER:

Q. Mr. Casey, have you told us fully now your conversation with Mr. Amann and the information you derived as to the lowest or best offer of the settlement made by the United States? If not, if there is any further conversation you may relate it. A. Well, in May of 1954 Mr. Edell had asked me and Mr. Amann to come to Washington to meet him for the purpose of discussing this offer and what ought to be done about it.

Actually, I was in Washington on another matter and he asked Mr. Amann to come down, which he did, so he could discuss the whole problem with the three of us. And on that occasion we discussed amongst the three of us, the Justice Department's offer and the chances of doing better than that if we had to go to Court.

And we discussed the chances of getting a Court determination and Mr. Edell would not be subject to renegotiation at all.

Q. On what theory would that have been attempted? A. Well, there was one or two decisions involving manufacturer's agents. The Fine Case and the Wolff Case, decided by the Tax Court under a prior law, the law had been changed to more explicitly, with an attempt to more explicitly, of making the law applicable to manufacturer's

39 agents, and the general legal theory was if there could be established Mr. Edell did not solicit business for his customers, the companies he was representing, that he really rendered management service and that he wasn't really trying to solicit business, that there would be an argument he was not subject to renegotiation.

Q. What Renegotiation Act, what area of the activities of the Renegotiation Act was Mr. Edell seeking to escape? A. Well it covered defense contractors. It covered all people doing business with the Government during the war.

Q. How would Mr. Edell as a manufacturer's representative, or whatever he called himself, would he be considered to be a contractor?

A. Because the law was explicitly applicable to manufacturer's representatives.

Q. As sub-contractors? A. Yes, it applied to contractors and sub-contractors, yes, engaged in defense work -- both contractors and sub-contractors and if we could establish that Mr. Edell did purely management work and wasn't soliciting contracts, then there was some chance of getting a determination that he was not subject to renegotiation at all. And Mr. Edell was very desirous of maximum efforts being made to establish that position.

40 And Mr. Amann, who was inclined to think it wouldn't be possible to do much better in Court than the Justice Department had offered.

Q. What offer? A. \$183,000 because of the great difficulties of proving anything about Mr. Edell's business.

His accountant had died and lost all of his books. There were no records. The records were in very bad shape. Any nobody thought very much of this theory that he wasn't eliciting contracts and everybody thought that would be very difficult to establish. But Mr. Edell staunchly contended that was the case and continued to up until we went to the Tax Court.

Q. Was there anything further in this conference in May 1954 among yourself, Mr. Edell, and Mr. Amann? A. No. There was nothing further until Mr. Amann undertook to go back and talk to the Justice Department to see if he could get them to approve the settlement.

Q. Up to this date had you been retained as counsel? A. No, this was all informal without any arrangement at all.

Q. What next transpired in your relationship professionally with Mr. Edell? A. Well, Mr. Benedict in my office continued to work
41 with Mr. Amann trying to get the proceeds of this real estate sale.

Q. Pardon me, but I am not clear in my mind, what was that? What was the proceeds of the real estate? Can you explain it briefly?

A. Mr. Edell was a partner in a venture which he had purchased some real estate in New York City.

MR. BERLOW: Your Honor, this is the matter I referred to in my opening. I object to this, there is no claim for any services in connection with this matter and it is entirely irrelevant.

THE WITNESS: Could I say something?

MR. MILLER: It is true no claim is made but I am going through this briefly to show the relationship between the parties which lead up to the contract which they are hotly disputing.

THE WITNESS: No, I think my retainer, my retainer of \$2500 was applicable to this work.

THE COURT: Which retainer?

THE WITNESS: The retainer I ultimately arrived at reflected the work I had done for Mr. Edell up to the time I had made formal agreement as well as the work I was to do for him.

42 MR. MILLER: There is some contention at some point that the \$2500 retainer which was agreed upon, was intended to cover expenses. This is controverted and for that reason I am briefly going to show that this and the other work was supposed to be included within that \$2500 retainer. I won't take long, Your Honor please.

BY MR. MILLER:

Q. Briefly, would you describe that? A. Mr. Edell was a partner in this real estate venture and in either the acquisition or a sale of this real estate they had run into title problems because the title company had discovered that the United States Government had a judgment of \$281,000 against Mr. Edell.

And in order to clear this cloud on the title -- it was Mr. Socklow, who had apparently represented the real estate syndicate, and he recommended that he and Mr. Amann, Mr. Edell and various lawyers together work out some arrangement under which they put some \$250,000 worth of securities in escrow with the American Security Bank and Trust Company, for the purpose of -- against a stipulation of the Government in consideration of this escrow they would not proceed on other civil means that they had to collect this money.

Q. To collect what money? A. The money he owed to renegotiation.

43

Q. The excessive profits? A. Yes, and when this real estate was sold and Mr. Edell's share of \$42,000 was to be paid to him as his share of the proceeds, the Department of Justice took the position that it had a lien on the \$42,000 and was entitled to place that \$42,000 in escrow.

And Mr. Socklow, who was the escrow agent refused to pay the money to Mr. Edell and with Mr. Amann we finally went to Judge Kaufman, a District Court Judge in the Southern District of New York. Mr. Benedict appeared in Court and got an order from Judge Kaufman that these funds were not necessary to protect the Government and the Government had agreed in consideration of the original escrow, the \$250,000 worth of securities, that that would secure them so the proceeds of the real estate's sale, Mr. Edell's share, needn't be held up, or couldn't be held in escrow by the Government.

Q. Who was Mr. Benedict, and under whose direction was he acting? A. Mr. Benedict was an attorney in my office and he was an employee of mine and he was acting under my direction.

Q. At that time, this was what, May 1954? A. This overlapped. It started some time in March or April and continued over into September or October.

44 Q. Who else was employed by you in your office and acting under your direction under any of the matters relating to Mr. Edell? A. Mr. Edward Brady.

Q. And was all of this Mr. Benedict's, Mr. Brady's, and yourself's action so far prior to entering into a contract for fees in controversial matters? A. Thus far yes. I wanted to complete the real estate transaction. After the funds were released from the lien of the United States Government, Mr. Socklow refused to give them to Mr. Edell because he asserted an attorney's lien against the funds and I had to negotiate with Mr. Socklow to get the \$42,000 for Mr. Edell.

And finally we agreed to pay Mr. Socklow \$1,250 for his legal fees for services. He kept that out of the \$42,000 and gave Mr. Edell the balance.

Q. And this was finally concluded? A. Some time in September or October of 1954. Well it started, as I said, in March or April and we went to Judge Kaufman some time in April or May.

Q. All right, what further efforts did you make in Mr. Edell's behalf? A. Well, I had never -- in June, some time in the latter part of June I received a copy of a letter which Mr. Edell had sent, with a copy of a letter addressed to Mr. Amann, which stated that he had read
45 his inconclusive correspondence.

Mr. Amann had apparently written Mr. Edell a letter about the status of the matter. Mr. Edell said he read your inconclusive correspondence about the matter. I don't want you to do anything more in the case until I come to New York.

A copy of that letter arrived in my office in June. Then in July on a Saturday Mr. Edell called to say he had to see me and could he come to my house which he did.

He came out to my house on Long Island and we spent several hours discussing his affairs. He told me that this matter was preying on his mind, that he couldn't attend to his other business, and that it was undermining his health and he asked me if I please wouldn't undertake to handle the matter for him.

He said he had decided whether I agreed or not that he was going to get other counsel; that he was going to terminate his relationship with Mr. Amann.

I was reluctant to take it on. I told him so. When I finally told him I would only take it if Mr. Amann asked me to and if Mr. Amann were satisfied with the state of the thing and thought it ought to be turned over to me or somebody else.

46 Then Mr. Edell discussed the matter of a fee arrangement with me. He said he had paid some \$15,000 for lawyer's fees and nothing had happened, his case was no further advanced than when he started and he didn't want to get into another situation where he would have to pay fees, independent of the results obtained, and he wanted me to take the case on the basis where my compensation would depend upon the degree to which he would reduce -- to which my efforts succeeded in reducing the amount of excessive profits which the Government claimed to be due them below the best offer which the Justice Department had made, \$183,000, and on the basis --

MR. BERLOW: Your Honor please, I object at this time to any conversation explanatory of the written contracts which haven't been offered in evidence but which are appended to the pleadings, on the ground that such explanation would be in violation of the parole evidence rule and consequently inadmissible. If they are relying on a written contract, the contract must speak for itself. That any parole evidence or oral testimony as to what the contract means, or its interpretation, should be excluded at this time.

MR. MILLER: The Court please, I think Mr. Berlow in his opening statement read to Your Honor a portion, he didn't read the whole sentence unfortunately, from one of these agreements, whereby he, himself, contends it is not clear as to what it means and I think there was continuing feeling because of certain factors which arose whereby an original contract was then rewritten in two parts, there was a
47 typographical error that Mr. Berlow mentioned and so forth

which would solely and clearly necessitate evidence as to the discussion of the parties both then and at the time the changes were made.

In order to get the whole contract which consists not only of the written but of the one case, a typographical error and the other, the reasons for certain changes, so Your Honor may construe the language.

THE COURT: The objection is overruled.

MR. MILLER: You may continue, Mr. Casey.

THE WITNESS: I explained to Mr. Edell that I didn't customarily take matters of this kind on a contingent basis but he urged strongly that I make an exception in his case and I agreed to do so.

I explained to him I had already done quite a bit of work for which we hadn't been compensated and we would have to do a lot of additional work, to study the case, and I had asked that some kind of a retainer which I agreed to make as small as I could, in order to justify bringing the case into the office and to justify the work I had done so far.

And I agreed to take a \$2500 retainer which would be applicable against the 30% of the difference between the best offer the Department of Justice had made as to the excessive profits Mr. Edell had earned

48 and the amount of excessive profits that we finally determined to be due from him, whether by settlement from the Government or by determination of the Court, plus 30% of the savings that might be an effected reduction of additional tax liability ultimately determined to be due from him and the amount of tax liability which the Government was then asserting against him.

And I explained to him in making that calculation we would eliminate from his income the amount which the Government determined to be excessive profits. I would take that out and wouldn't ask for that amount because that would be an automatic reduction in his income tax liability. And that was the understanding we arrived at.

Then I explained that he would have to settle his obligation to Mr. Amann and Mr. Amann would have to agree to turn the case over to me. He would have to ask me to take it.

During the next week I heard from Mr. Amann, who called me and told me he had talked to Mr. Edell and that Mr. Edell had told him he wanted me to handle the case from thereon, and that he was happy to get out of it, and as soon as he collected what Mr. Edell owed him he would be glad to send me the papers and to withdraw his appearance before the Tax Court, and take the other steps necessary to turn the case over to me.

49

Then --

Q. (By Mr. Miller): Pardon me, were you shown some correspondence from Mr. Amann to Mr. Edell dated July 21, 1954 about the termination of their relationship? A. Can I see it? I think it was --

MR. MILLER: I will have it marked.

THE DEPUTY CLERK: Plaintiff's Exhibit 4 for identification. (Document marked for identification).

MR. MILLER: Plaintiff's 4 being a letter dated July 21, 1954.

Q. (By Mr. Miller): I will hand you plaintiff's Exhibit 4 for identification and ask you if you have seen that and what discussion, if any, you had concerning it.

MR. BERLOW: Your Honor, I would object to that. This is a letter from Mr. Amann in which he goes into great detail as to his relationship with Mr. Edell, which is not relevant in this case and which would open up a collateral issue which I think would unduly prolong this trial.

THE COURT: What is the purpose of this?

MR. MILLER: It bears upon the testimony just given as to the assistance of Mr. Casey that payment be made and the records be turned over from Mr. Amann to him before he would enter into an attorney-client relationship.

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THE COURT: I do not think that Mr. Berlow is disputing that, are you?

MR. BERLOW: No, I agree Mr. Amann was paid and the papers were turned over to Mr. Casey.

MR. MILLER: That isn't exactly what that letter says. He wasn't paid and he had a great deal of difficulty getting payment and Mr. Casey had difficulty in getting the file. It is part of the whole story, of the difficulties he had and the efforts he put forth on behalf of this client. It is not only Mr. Amann but other attorneys in two counts. I am offering it only to show the efforts rendered by him and the difficulties of the relationship which bears on the nature of this agreement.

THE COURT: This is a letter from Mr. Amann to Mr. Edell?

MR. MILLER: Mr. Amann to Mr. Edell.

THE COURT: Well where did you get it from?

THE WITNESS: Mr. Edell showed it to me and gave me a copy.

THE COURT: Well, I will overrule the objection.

MR. MILLER: You may proceed with your answer.

THE WITNESS: Mr. Edell showed me this letter which is dated July 21, 1954, shortly, a few days after its date before I entered into a formal agreement with him, a written agreement with him.

51

MR. MILLER: I will offer it in evidence and ask leave to hand it up to the Court.

MR. BERLOW: I object to this, Your Honor.

THE COURT: Admitted. (Plaintiff's exhibit 4 admitted in evidence).

THE DEPUTY CLERK: Plaintiff's Exhibit 5, 6, 7, 8 and 9 marked for identification. (Documents marked for identification).

MR. MILLER: For the record may we show a letter dated August 6, 1954 to Mr. Edell from Mr. Casey, the first page of the letter is marked Plaintiff's 7, and the second page Exhibit 8, so in effect it constitutes one exhibit but it has already been marked.

THE COURT: What is that Exhibit number ?

MR. MILLER: It is numbers 7 and 8, though it is one letter.

BY MR. MILLER:

Q. Mr. Casey, I will hand you Plaintiff's Exhibit 5, and 6 and ask you to identify those documents please ? A. Well, Exhibit 5 is a letter agreement signed by Mr. Edell and by myself in which I stated in my compensation is to be 30% of the difference between what the Department of Justice offered or \$138,000 and the final settlement of
52 the dispute, and the \$138,000 is crossed out and in the margin there is in pencil \$183,000.

MR. BERLOW: Your Honor, I don't want to repeat this objection. I have objected once on any oral testimony as to these documents. So I won't be having to object, may I have a running objection as to any testimony to these documents, so I won't be having to repeat my objection.

THE COURT: Do you mean you are objecting to Plaintiff's Exhibit 5, 6, 7, 8 and 9, including 7a ?

MR. BERLOW: I have no objection to admission of these.

THE COURT: You are objecting to his testimony, is that it ?

MR. BERLOW: I am objecting to his testimony and the explanation of the written contract on which he relies.

MR. MILLER: We have no objection to a continuing objection if it will save the Court time.

MR. BERLOW: No, but to further save the Court's time I have no objection to the admission of 5, 6, 7 and 8.

THE WITNESS: You asked me to describe it. I am describing what is on the paper.

THE COURT: I wonder if you need to have him to go into the matter of any papers on which there is no objection ?

MR. MILLER: There is a continuing objection.

53 THE COURT: The objection is not to the papers it is to the --

MR. MILLER: To the explanation. But I need the explanation in order that the Court may understand why it appears \$183,000 in the body or in the margin and \$138,000 or vice versa.

THE COURT: Very well, I will overrule the objection.

BY MR. MILLER:

Q. Will you explain to the Court briefly why in the body the figures of \$138 and in the margin \$183. A. There was a mistake in the preparation of the papers and when it was called to my attention by somebody, it is not my writing, somebody crossed out 138 and wrote 183 in the margin. The two figures were transposed.

Q. What should the figure be in terms of your agreement with Mr. Edell? A. Well it says here between the Justice Department offer which was 183 and that is what we agreed. The Justice Department's offer.

Q. Did you subsequently call this typographical error or the transposition of 183 and 138 to Mr. Edell's attention? A. Yes I did.

Q. When and how? A. I called Mr. Edell on the telephone and I told him there seemed to have been a mistake in the preparation of the agreement about the terms on which I was to handle the renegotiation matter, and the understanding was if it was \$183,000, the amount the Justice Department had offered, and Mr. Edell said that --

THE COURT: Just a minute. Do I understand that he is still talking about Plaintiff's 5 for identification?

MR. MILLER: Yes, Your Honor, Plaintiff's Exhibit 5 has the transposition which he is now telling conversation about and then I will introduce another written document which I will ask him to refer to.

THE COURT: Well, did I understand him correctly to say that is the letter agreement? What figure did it have in there when it was signed?

MR. MILLER: The original. Might I hand this up to Your Honor?

BY MR. MILLER:

Q. What did you and Mr. Edell say then concerning the \$138,000 figure that is contained in Plaintiff's 5 for identification. A. I told him a mistake had been made in the preparation of the papers that would have to be corrected and I would send him the correction.

And he said to send him the correction, that he thought somehow that he had been told somewhere along the line he would have only to
55 pay \$138,000 or 130 and some odd figure in the thousands of dollars.

I thereupon had a corrected copy of the agreement made and I sent it to him with a letter describing how he had gotten the \$130,000 figure in his mind.

Q. How had he gotten that in his mind? A. That was the figure Mr. Amann had estimated he would have to pay including taxes and interest that \$137,500 and some odd dollars and sixty cent figure.

Q. Is that the figure which appears in Plaintiff's Exhibit 3 being in the amount of \$137,526.60? A. Yes.

Q. And does that represent the renegotiation cost to Mr. Edell as the result of the settlement at \$183,000 with the allowance of tax credit and provision for interest? A. Yes.

Q. You say then you wrote as well as having discussed this transposition error with Mr. Edell? A. Yes, I did.

Q. And I will ask you if Plaintiff's Exhibit 7 was your further correspondence on that subject. 7 and 8 since that is the letter explaining those pages? A. Yes, the two letters explaining the mistake and explaining how the retainer was to work and describing the
56 corrected agreement which was enclosed. There was enclosed two copies of it.

Q. I will ask you in Plaintiff's 9, the new agreement, correcting the figure to \$183,000 was the lowest settlement offer of the Justice Department? A. Yes, it is.

Q. Would you have represented Mr. Edell or done any work in his behalf, had he not agreed with you to correct the error and execute the corrected fee agreement which had the correct amount in it?

A. No, I wouldn't have.

MR. BERLOW: I think this is a little argumentive and leading, Your Honor, and it can't call for an answer that is evidence.

THE COURT: The objection is sustained.

MR. MILLER: I will offer into evidence Plaintiff's Exhibit 7, 8, 9, and 6, if they are not already offered. I guess 5 has been.

THE COURT: Plaintiff's 5 is admitted, 6 and 9 Mr. Clerk.

THE DEPUTY CLERK: Plaintiff's 8, the exhibit number is eradicated.

THE COURT: Plaintiff's 7 is admitted. The Clerk marked Plaintiff's Exhibit 8 on the second page of 7 it has now been eliminated.

57 (Plaintiff's 6, 7, and 9 admitted in evidence).

MR. MILLER: Thank you, Your Honor. In other words, Exhibits 7 and 8 have been consolidated into Plaintiff's 7 is that correct?

THE COURT: Yes.

BY MR. MILLER:

Q. Following your conclusionary agreement of your work in August 1954, that you have described, Mr. Edell and you straightened out the amount and so on, tell the Court what you did, what his problems were and what happened? A. Mr. Edell came in and signed the corrected agreement. I then filed the agreement with the Committee on Practices of the Treasury Department.

Q. When you say corrected agreement, what agreement are you referring to? A. The agreement, the tax agreement which was broken into two agreements, the arrangement was reflected by two agreements. The tax agreement was corrected and was executed and had a date of July 28th and the corrected renegotiation agreement bore a date of August 6.

This is what I mean when I say corrected renegotiation agreement, the two agreements were filed with the Committee on Practices.

58

Q. Was the agreement with reference to income tax that is shown in Plaintiff's 6? A. Yes.

Q. This and the corrected renegotiation agreement were filed with whom? A. The Committee on Practices in the Treasury Department.

Q. What happened then? A. Well, Mr. Edell paid me \$1,000 in August and \$1,000 in September, and \$500.00 in October in accordance with the agreements, and gave me the \$2500 retainer which we had agreed upon.

THE COURT: You mean he paid you \$5,500 in all?

THE WITNESS: Oh no, I didn't say he paid me anything when he signed the agreement.

THE COURT: I understood you, did you say a thousand in August a thousand in December and a thousand in October? Is that correct or incorrect?

THE WITNESS: I said a thousand in August, a thousand in September, and 500 in October.

BY MR. MILLER:

Q. Of what year? A. All in 1954. And that was all of the \$2500 retainer. Nothing was paid when the agreement was signed.

Q. What was the position of the Internal Revenue Department with reference to contingent fee contracts and retainer agreements at that time? A. The Internal Revenue Department permits --

59 Q. Permitted as of that date? A. They permitted contingent fees provided there is a retainer and provided the retainer is in reasonable relation to the amount of the possible compensation arising from the contingent feature of the arrangement.

And since we had agreed that Mr. Edell would pay me a \$2500 retainer, I thought it best to write that into the tax agreement, and not to take a retainer, to take the renegotiation agreement on a pure contingency basis, because in renegotiation there was no requirement as to retainers.

Q. Did you discuss that with Mr. Edell? A. Yes, I did. I told Mr. Edell I thought it was for that reason, I thought we ought to have our arrangement reflected by two agreements, one for the renegotiation and one for the tax.

Q. When did you have a discussion with Mr. Edell, approximately? A. Well, shortly after the Saturday he came to my house and when we arrived at the broad principle of our relationship.

I went into the office and discussed it with someone in the office, and they pointed out this feature to me and I sent back to Mr. Edell and said we will have to break it into two agreements instead of one.

60 We will get the same price, and it is exactly the same thing.

* * * * *

MR. MILLER: I would like to have marked three exhibits if the Court please, which bear upon the matter he is just testifying about.

THE DEPUTY CLERK: Plaintiff's Exhibit 10, 11 and 12 marked for identification. (Documents marked for identification).

BY MR. MILLER:

Q. Mr. Casey, I am going to show you Plaintiff's Exhibit 10, which is a letter dated October 13th, 1954, from the United States Treasury Department to yourself, and ask you if you will identify that document please? A. Yes, it is a letter I received from the Director of Practices in the Bureau of Internal Revenue.

Q. What point was made to that letter in connection with your testimony concerning the nature of the two contingent fee contracts?

61 Just briefly pointed out. A. It draws my attention to the requirements relative to the amount involved in litigation and the amount of the retainer fee. The amount involved in litigation must be given and it points out that this office has not been advised of the amount involved in litigation.

Q. This is the income tax litigation? A. Yes.

Q. I am going now to hand you Plaintiff's Exhibit 11 dated October 8, 1954, being a letter from Mr. Brady to Mr. Edell, and ask

you to identify that document please? A. Well, it is a copy of a letter, stating that it is necessary.

THE COURT: Who is the letter to and from?

THE WITNESS: It is a letter to Mr. Edell from Mr. Brady in my office, saying it is necessary that the enclosed affidavit be signed by you in order to comply with the Treasury Department regulations.

Q. (By Mr. Miller): Do you know what that affidavit was, just in general language? A. No, I don't.

Q. I will hand you Plaintiff's Exhibit 12 a letter dated October 8, 1954 from yourself, Mr. Casey, to the Director of Practices, Commissioner of Internal Revenue, United States Treasury Department, and ask you to identify that for me please. A. Yes, it is a letter which

62 I wrote to the Director of Practices describing my written agreement with Mr. Edell on tax deficiency for the years 1943, 1944, 1945, 1946, and 1947.

Q. And what was the purpose of that letter of October 8th from yourself to the Director of Practices? A. To comply with the requirements that the Director of Practices be notified of matters which are taken on a contingent fee basis.

Q. If I understand you correctly the contingent fee basis was 30% of tax savings, and accompanied by a \$2500 retainer on the income tax phase. Just tell us briefly? A. Do you want me to read it?

Q. Yes. A. Well I described the two computations would be 30% of the difference between the tax deficiency asserted in the amount of tax deficiency finally determined to be due; the calculations to be made after taking out of income the amount, any amount which Mr. Edell would have to pay to the United States Government as excessive profits.

MR. MILLER: I would like to offer, the Court please, into evidence Plaintiff's Exhibit 10, 11 and 12.

MR. BERLOW: No objection.

* * * * *

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WILLIAM J. CASEY

having been previously called as a witness in his own behalf, resumed the stand, was examined, and testified further as follows.

DIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Casey, I believe you left off after having testified to the execution of the agreement and the commencement of work as attorney you performed.

Will you now take us through the steps of what action was taken by you in representing Mr. Edell in these matters? A. Yes, Mr. Amann sent me several cartons of records, correspondence, some diaries Mr. Edell had kept, copies of tax returns and so on.

64 And the first thing I did was to examine them to see what was available. I examined them -- I had Mr. Brady and Mr. Benedict and myself --

MR. MILLER: Keep your voice up please, Mr. Casey.

A. -- Together with Mr. Benedict an employee of mine at the time who had about -- had formerly worked with the Renegotiation Board in New York City, and Mr. Brady, we examined the records Mr. Amann provided us with.

Q. I asked you if these records are contained in the boxes which are here without offering them into evidence, were they very voluminous?

A. Yes, they were very voluminous. There were several cartons of them.

Q. Did Mr. Edell know that Mr. Benedict and Mr. Brady, your employees, were assisting you in handling these matters? A. Yes, he talked to them constantly about the matter.

Q. Was the income tax matter held in abeyance while you went forward on the renegotiation initially? A. One of the papers that I received that I noticed there was no papers on the 46 and 47 tax deficiencies. I talked to Mr. Amann about that and he told me he never had any papers and they were all in the hands of Mr. Edell's accountants.

Q. For what years, which were those years? A. For 1946 and 1947.

65 Q. Did those papers pertaining to 1946 and 1947 income problems ever come into your hands as attorney? A. Not all of them, no, they were kept by Mr. Edell's accountants. I went down and I talked to the people in the Internal Revenue Service, who were handling Mr. Edell's income tax returns, and I talked to Mr. Dixon of the accounting firm that had Mr. Edell's books for 1946 and 1947, and it was determined that the tax return for 1945, 1946 and for 1943, 1944, 1945 had been audited by the field, a deficiency had been asserted, a thirty day letter had been issued and a protest was filed which placed them in the appellate division of the Internal Revenue Service.

Q. What is the significance of that? A. In reviewing them, well one of the steps in reviewing them had already been taken and the returns for 1946 and '47 were still in the hands of the examining agent, and the accounting firm which had Mr. Edell's books for 1946 and '47 was handling that and dealing with the agents.

And it was understood we could not get into that until the accountants felt they couldn't satisfactorily conclude it. And I think his name was Mr. Weeis, in the Internal Revenue Service, said and I agreed, the procedure which would have to be followed first would be to get the renegotiation matter settled and then only could we proceed to the 1943, '44 and '45 tax returns and only after that was settled could you proceed to the 1946 and 1947 returns which were at a different level in the Internal Revenue Service.

66 Q. Were those results independent so one step couldn't be taken until the preceding step was finished? A. That is right. You couldn't or wouldn't know where you were and they had to be taken in sequence. Renegotiation in years and the tax had to be taken in chronological order.

Q. To refresh your memory, Mr. Casey, I will show you the protest that was filed May 2, 1951 and ask you if you will tell us what the deficiency tax returns were claimed by the United States for the years 1943, 1944, and 1945. A. The deficiency income tax for 1943 was \$19,393.81.

Q. That was for the 1943 income tax deficiency? A. Tax deficiency.

Q. The additional year? A. The additional year the Government wanted is for 1944 and it was \$50,712.85.

Q. Additional? A. Additional tax. And for 1945 it was \$105,837.63. And a total tax additional or total additional tax for the three years of \$175,944.29.

Q. In terms of the work now that you performed, what was the next area of operation that you went into? A. Well, I discussed with Mr. Weeis of the Internal Revenue Service the character of the case

67 which they had against Mr. Edell, * * *

* * * * *

Q. Was this conversation with Mr. Weeis from the Internal Revenue Service as counsel at the time for Mr. Edell? A. Yes, I had power of attorney and represented Mr. Edell.

Q. Had that power of attorney been completed by Mr. Edell and filed with the Internal Revenue Service? A. Yes. It had to be before I could enter into discussions.

Q. Would you describe to the Court the contentions made by the Government with reference to Mr. Edell's income tax matters that you were handling as counsel?

MR. BERLOW: Your Honor, I object to that question, it is hearsay. It is documentary evidence.

THE COURT: I will have to overrule your objection on the same theory. Now he is authorized to represent this man and he goes down as his representative and what he says is in effect something he is doing on behalf of the defendant Mr. Edell so on that theory I will have to

68 overrule your objection.

You may state what was said.

[THE WITNESS:] Well the representative of the Internal Revenue said that he felt Mr. Edell could not justify the expenses he had deducted on his tax returns; he felt some of the money which he deducted had been applied to buy securities and place --

THE COURT: Applied to what?

THE WITNESS: Applied to buy securities in his sister's name. Cash payments had been made to a brokerage house and Mr. Edell had signed the tax return claiming a partnership existed between himself and his brother Lewis E. Edell, and the Internal Revenue Service felt no such partnership existed and that it could not be established.

[BY MR. MILLER:]

Q. Mr. Casey, in order to have clarity in the presentation of facts, I would like for you, if possible, to keep separate the work performed in terms of renegotiation, and then we will go into the income tax.

Tell what you did in terms of handling the renegotiation problems for excessive profits? A. I started to do the research on the renegotiation matter in order to make one more effort, to make settlement with the Justice Department.

We analyzed the records and correspondence of Mr. Edell. We researched the law in greater depth on whether or not a manufacturer's agent was subject to renegotiation at all. We had long meetings and conversations with Mr. Edell, and I hired a man, had a man named Rudell Silveragim, who was a lawyer in Washington, who had a lot of experience in Government contract work. I had him do a lot of research in the Tax Court on petitions and so on, to determine just what these manufacturer's agents had been getting allowed in terms of percentage of their business and so on.

And after doing this research and getting control of the facts and the law in the case, I went down and arranged a series of meetings with Mr. Prentice and Mr. Hickey. Mr. Hickey was Chief of the Litigation Section of the Justice Department. Mr. Prentice was in charge of Mr. Edell's case. I first gave them the picture which we had constructed of Mr. Edell's expenses and a comparison of his earnings with the earnings that had been allowed other manufacturing agents and representatives, and tried to persuade the Justice Department that they should be willing to settle for less than \$183,000.

Mr. Hickey and Mr. Prentice said they did not think --

MR. BERLOW: Your Honor please, I again object. I would further repeat this objection. I do object to any oral statements made by any Government officials in reference to the claims of the Government in

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this matter. It being our position that those claims, that is hearsay. And secondly, those claims have been reduced to any number of written documents, and those documents can speak for themselves.

THE COURT: The ruling is the same.

THE WITNESS: The Justice Department was unwilling to make a better settlement offer. They said they had felt they had offered as much as they could justify, as much as they could justify them offering, and he would be unable to prove the expenses that they had allowed and if he did take it to Court and they had discounted the possibility we went on a legal issue in allowing these expenses.

THE COURT: They did stand on this \$183,000?

THE WITNESS: Yes, they stood on the \$183,000. I am trying to describe what I did.

[BY MR. MILLER:]

Q. Did the Justice Department at any time prior to the trial of this issue in the Tax Court, make any offer of settlement below or less than \$183,000? A. No, no.

Q. Why did -- that \$183,000, was that a package deal proposal covering all aspects of the renegotiation case? A. Yes. I asked them if they would stipulate to the \$183,000 so I could go to the Tax Court under Rule 30 of the Tax Court Rules and get a determination as to the lia-

71

bility of Mr. Edell. The legal question, whether he was liable to renegotiation at all. They said they were unwilling to do this because that possibility had been discounted in their settlement offer. And if I wanted to try the legal issue, whether he was subject to renegotiation at all, it would be necessary to carry the burden of proving all of his expenses and proving the value of services, and eliminating from his income certain items which could be said not to be renegotiable.

Q. Let me ask you on the \$183,000 offer before you got into the Tax Court hearing, now what was the position of the Justice Department

and yourself regarding the allowance of expenses of Mr. Edell, insofar as it relates to the package of \$183,000?

THE COURT: \$183,000 before the deduction of the expenses or after the deduction of expenses?

THE WITNESS: It was after the deduction of expenses; after all deductions.

THE COURT: All right.

[BY MR. MILLER:]

Q. If it was after the deduction of the expenses, in what amount, approximately? A. About \$60,000. The total picture was that Mr. Edell had received commissions of about \$382,000.

THE COURT: How much?

72 THE WITNESS: About \$382,000 and they were willing to concede that \$49,000 of this was not subject to renegotiation.

They meant he would be charged with renegotiable income of about \$331,000

[BY MR. MILLER:]

Q. What other factors were considered in arriving at the \$183,000 package settlement offer? A. They were ready to allow expenses of about \$53,000, as I recall it.

And there was another \$6,000 which had been a legal fee, which was taken off and the \$49,000 they said was not renegotiable business.

Q. Mr. Casey, you heard the opening statement of Mr. Berlow wherein he stated that \$66,000 worth of expenses was what the Government was willing to concede but you didn't concede it, therefore, you got less.

Will you explain that now to the Court? A. Mr. Edell wanted his case tried in a Tax Court, in the hope that the Tax Court would decide that it wasn't renegotiable at all, and in the further hope the Government would decide, the Tax Court would decide, his services were worth more than the \$84,000 which the Justice Department was willing to concede they were worth.

The Justice Department said that he was entitled to a reasonable profit, for \$24,000 for 1943, \$27,000 for 1944; and \$33,000 for 1945.

* * * *

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Q. What was the Government willing to allow if you settled on \$183,000 package deal, approximately on expenses? A. My recollection is they were ready to allow about \$60,000.

Q. If you did not settle on the basis of having excessive of \$183,000 was that allowance of expenses available to you? A. No.

Q. Why not? A. Because they said they had discounted the possibility that he wouldn't be subject to any renegotiation at all, and making an allowance for expenses as a basis for settlement which they believed he wouldn't be able to prove or sustain.

Q. When you went to try -- A. I tried to make it on the stipulation of \$183,000 and still fight the legal issue and they refused to do that.

* * * *

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Q. Well, did Mr. Edell reject the \$183,000 settlement offer?

A. Yes. After I went to the Renegotiation Board to see if they would make a further study of what Mr. Edell's reasonable profits had been, because they had given such a study to the Justice Department, which the Justice Department had used as the basis for their offer of \$183,000, and they said they didn't see a more generous offer that could be made.

Q. Did you then -- A. I then discussed it with Mr. Edell and told him he would have to accept that offer or lose it all together.

And he said he would rather have it fought out in the Tax Court, and he authorized me to reject the offer which the Justice Department had made.

I wrote the Justice Department a letter, rejecting that offer and then I proceeded to prepare to try the case in the Tax Court.

The first thing I did was to move that it be transferred from the Washington docket to the New York docket in order to facilitate the trial because the New York docket was moving faster than the Washington docket.

75

And we then started to prepare to try the case. We wrote the nine manufacturers with whom Mr. Edell had done business, and whom he represented during the war, who had paid him commissions, to arrange to interview them and see what kind of testimony we could get from them.

It turned out that one of them was out of business and we couldn't find him. Three of them had been sued by Mr. Edell at the end of the war and they were unwilling to testify or help us in any way. So that left five. And Mr. Brady went up to Boston and Providence, New Bedford and I think Worcester, to talk to officials of these companies, Colonial Knife, and others, and they told us what they could and what they had experienced with Mr. Edell, about the activities they had carried on, or that he had carried on for them and we selected four or five men, whom we thought could be used as witnesses, and who were willing to come down and testify when the case came to trial.

I also talked to Mr. Edell and told him I thought a major issue in the case would be what was reasonable value of his services, what was the work he performed worth. And that we ought to get independent testimony on this. He authorized me to get expert witnesses, and I talked to

76 four or five management engineering firms, and people around New York, who had had some experience in solving management problems and evaluating management services, and selected two of them who agreed to appear before the Tax Court as expert witnesses on the value of Mr. Edell's services.

Then the time went on and finally the case got to the head of the calendar in New York and Mr. Leathers, an attorney, who was to try the case for the Justice Department, came up to New York and spent several days in our offices going through the correspondence, and he identified and we agreed on some 270 items of correspondence that he wanted to introduce into evidence.

I might say that in the preparation we did, we analyzed Mr. Edell's diary, and his correspondence, and his railroad tickets, and hotel bills, and so on, to try to see how much of this expense that he claimed could be justified.

I asked him for his books and he told me Mr. Appel, his accountant had died, and lost the books. So there was no books of account. We also found that some of the manufacturers whom he had represented either had gone out of business or wouldn't make their books available, or no longer had their records going back to the years 1943, 1944 and 1945.

This was ten years later and it was evident that the problem of proving Mr. Edell's expenses would have to depend entirely on his un-
 77 corroborated testimony in great detail, a large accumulation of small matters.

Mr. Leathers, as was his job, talked to me about how we could simplify a trial of this case, and how we could save the Court's time, and what we could stipulate to as a matter of fact.

There were three really, there were four issues in the case. There was the issue of how much income Mr. Edell had received was really negotiable. On that we had incomplete records because Mr. Edell's books were lost, and because the books of his customers were not available in full.

The second issue was how much of the expenses Mr. Edell claimed to have incurred were really attributable to his business. All we had on that was check books and the check books had many large checks made out to cash, and we had no way of identifying those with business expenses except on Mr. Edell's testimony.

The third issue was the value of Mr. Edell's services, and the fourth issue was whether he was engaged in solicitation, which was a factual issue, which would determine and have influence on whether or not he was subject to renegotiation at all.

Mr. Leathers was willing to stipulate that of the income additional he had received \$382,000, about \$40,000 was not renegotiable, and also
 78 to concede and stipulate that \$42,000 was the proper amount of expense attributable to this renegotiable business.

And he further was willing to stipulate that the value of Mr. Edell's services for the three years would not be less than \$60,000 dollars. This gave me the opportunity to prove that they were more than that amount

and to that extent if I could do it, Mr. Edell's situation would be improved.

I had this discussion with Mr. Leathers and the case was on the ready calendar in New York on May 1st, which was a Monday.

On the preceding Friday I had Mr. Edell to come up to New York and I spent a great deal of time with him, most of Friday and most of Saturday and to the evening of Saturday and Sunday morning, going over his war time experiences and what he had done; refreshing his recollection, refreshing our joint recollection as to how his whole activity had unfolded and what would be presented to the Court. I explained to Mr. Edell on that occasion that I could stipulate and get the issue of expenses out of the way and I could relieve us of the proof of proving that \$40,000 of the income was not subject to renegotiation.

79 I explained to him that we didn't have the proof to justify the deduction of this expense, that we had made calculations and computations as to how much railroad fare, and hotel expenses, and telephone expenses, could be justified from the trips, the record, the evidence would show that Mr. Edell had taken and they wouldn't add up to more than \$5 or \$6,000 a year.

I told him there would be a great deal of difficulty and great trial of the Court's patience, trying to prove all of these expenses in court, and since we were hoping to establish that he did not engage in solicitation of contracts, that some of the expenses he was claiming involved came in large cash checks which had been made out to buy cases of whiskey which he had given to various people, and I felt this would be somewhat inconsistent with our contention that he did not solicit business and I felt it would also impair our effort to establish that he was rendering high class management service of a character which should be compensated generously, of his worth of large amount of income.

And I thought the right thing to do was to get these troublesome expense issues and troublesome accounting issues, on which we had no books of the case by making a stipulation so we could focus our attention and the Court's attention on the two main issues of the case, where

we could make more progress, that of arguing Mr. Edell was not subject to renegotiation because he rendered managerial rather than solicitation services, and his services were entitled to be compensated at \$75,000 a year instead of \$20,000 a year which the Government was ready to concede.

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Q. What did Mr. Edell say when you explained these proposals to him? A. Mr. Edell said I had to try the case and it was a matter of legal judgment and I should make it as I thought best. And we proceeded to review the case until Sunday afternoon when I had to go down to Wilmington, Delaware, on a meeting. I had a meeting down there. So I absented myself. I went down and had my meeting in Wilmington and I got back home Sunday night and I felt very tired and I had a headache, in fact I was running a fever.

I called my Doctor in, he told me I was tired and had picked up some kind of a bug and I should stay in bed for a few days. We had sent out subpoenas to these witnesses and brought them into New York but I wanted to try the case. So I called Mr. Brady and told him to appear in Court Monday morning and to ask the Judge for a continuance until I got to feeling better, which he did. This was done and the Court agreed to postpone the case and take up the case on the following Wednesday, nine days later, provided we came down to Washington, because she was finishing up her tour in New York and was going back to Washington, and would be able to try the case in Washington the following week.

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At the hearing Judge Heron was told we had stipulated expenses and other things, and she put the case over until the following week in Washington.

Q. Was Mr. Edell present at that hearing? A. The record shows he was. I wasn't there.

Q. This was in New York? A. This was the New York hearing. The following Tuesday I was back in shape. Mr. Brady and I brought those papers and exhibits and got Mr. Edell, and with Mr. Edell we arranged for the witnesses, who Mr. Edell had worked for, to come down to Washington and we brought down the two management engineers who had agreed to serve as experts.

And on Wednesday morning we started to try the case. I and Mr. Leathers explained to the Court, to Judge Heron, that we had stipulated to take the issue of expenses out of the case, and to take the issue of what portion of Mr. Edell's income was not renegotiable, out of the case so that the Court and the evidence could be focused on the issues of what was the value of Mr. Edell's services and whether or not he was really subject to renegotiation.

Q. Mr. Casey, when you explain -- A. Yes.

82 Q. When you explained to Judge Heron the stipulations pertaining to the expenses on the other matters, was this in Mr. Edell's presence or was he in the Court Room. And had he authorized you to make such stipulations? A. Yes, certainly.

Q. You may proceed. A. I put Mr. Edell on the stand and took him through his experience -- what he had done during the war. Then Mr. Leathers on cross examination asked Mr. Edell how much had he made in the year 1938. Mr. Edell said he had made \$30,000 in 1938.

Mr. Leathers then produced Mr. Edell's income tax return for 1938 on which he had reported \$3500.

MR. BERLOW: Your Honor please, the transcript of all the testimony in the case is available and I do not think it should be testified to piece meal, as apparently Mr. Casey intends to do.

I would object to any recapitulation of testimony that took place at the trial and would offer the transcript in lieu of that.

THE COURT: How many pages is the transcript?

MR. BERLOW: Approximately 4 or 500 pages. I think if Mr. Casey testifies as to portions of that transcript and the explanations of those portions that we may have to interrogate as to other portions.

83 THE COURT: The thing about which you are testifying -- he conducted the litigation as directed or authorized by your client.

MR. BERLOW: Insofar as the expenses are concerned we raise no issue as to the other aspects of it at all. There are very limited portions of the transcript having reference to the expenses which we could extract from this transcript and submit to Your Honor. I say those are

the things that are the only relevant portion of the transcript.

THE COURT: Mr. Miller, do you care to stipulate with him about the admissions of the transcript?

MR. MILLER: I have certainly no objection Your Honor, to the transcript going in. We are going to refer only briefly to the portions of the trial that went on and I thought it would save Your Honor the trouble of going through all of those pages.

THE WITNESS: The reason what I did is all I am going to talk about.

MR. MILLER: If Mr. Berlow wants to go into any specific matters, I will put the transcript in and I think it would save time if he referred to only that part of the transcript which he thinks is relevant.

THE COURT: You may proceed.

THE WITNESS: Mr. Leathers introduced Mr. Edell's tax returns which showed he had reported \$3500 of income for the year in which he testified he made \$30,000, and he also produced a record showing that Mr. Edell had filed personal bankruptcy in 1938.

* * * * *

[BY MR. MILLER:]

Q. Continue with your testimony. Will you state your testimony as to what you did or what you may have advised or told Mr. Edell?

You now are in the stage of describing the tax court hearing.

A. Yes.

Q. Did you file any briefs then or subsequently with the Government? A. Upon the conclusion of the Tax Court hearing, I filed a 45

85 page brief and an answering brief later on.

Q. Did the Government, following the filing of your brief, file a reply brief to which you subsequently replied? A. Yes, they did and I filed a reply brief.

THE DEPUTY CLERK: Plaintiff's Exhibit 13, 14 and 15, marked for identification. (Documents marked for identification).

[BY MR. MILLER:]

Q. I am handing you, Mr. Casey, Plaintiff's Exhibits 13, 14 and 15,

and ask if these exhibits are the briefs filed by you on behalf of Mr. Edell in the tax case and the Government's reply brief and your reply brief to the Government? A. The Exhibit 13 is my brief which I prepared and filed. The Government then filed a brief. I think we filed simultaneous briefs and then we filed reply briefs and this is the Government's reply brief.

Q. Government's Exhibit 14? A. Yes. And Exhibit 15 is my reply brief. It is signed by me and by Mr. Brady.

Q. By the way, did the Government's reply brief cite the testimony of Mr. Edell as to his income and note whether income was \$5,000? Did you refer to it? What page is that of the Government's brief?

A. On page, page Roman numeral I, which is appended to the reply brief.

86 They cite the testimony in which Mr. Edell had this income tax return produced on him and the bankruptcy filing produced on him.

Q. Does that refresh your memory as to the testimony of the income tax return filed? A. Yes, as I said, as I testified that he said \$30,000 and the tax return showed \$3500.

No, this is my testimony. On direct examination he said he made \$25,000 a year. On cross examination he said he was making \$30,000, and then the tax return was produced on cross examination. His bankruptcy petition for 1938 showed his income was \$5,150.

MR. BERLOW: I object to this.

MR. MILLER: I will offer them in evidence.

MR. BERLOW: I would object and move that any reference to a bankruptcy petition, that is a legal record, is not before us and that it be stricken from this case. We don't want to try this bankruptcy case again.

MR. MILLER: No, this is not the point.

THE COURT: I understood these matters were a part of the testimony in the tax case.

THE WITNESS: Yes, Ma'am.

THE COURT: Are you objecting to these exhibits?

MR. MILLER: I am offering for the record --

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THE COURT: Plaintiff's 13, 14 and 15?

MR. MILLER: That is right.

THE COURT: Have you seen them?

MR. BERLOW: I have no objection to that. I have no objection to those records going in and Your Honor reading all of the contents. And I have no objection to the transcript being submitted into evidence and Your Honor reading that if you are so inclined.

But I do object to any testimony by this witness as to isolated portions of the previous transcript and move that any such references be stricken.

MR. MILLER: In view of counsel's position, I will offer in evidence the transcript.

THE COURT: Very well, Plaintiff's 13, 14 and 15 are admitted in evidence.

Mr. Berlow may want to use his transcript. Well, you may use it if you want to. You can get it from the Clerk at any time. What number did you assign?

THE DEPUTY CLERK: Number 16.

THE COURT: Plaintiff's Exhibit 16 is admitted.

THE DEPUTY CLERK: Plaintiff's Exhibit 16a, b and c marked and received.

[BY MR. MILLER:]

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Q. Will you continue now to tell the result of the hearing, moving on from the portions you have already testified to, Mr. Casey? A. Well, soon after the filing of the briefs, Judge Heron handed down a decision which found that Mr. Edell was indeed subject to renegotiation.

MR. BERLOW: Again, Your Honor please, I object.

THE COURT: Is there a written opinion?

MR. MILLER: Yes, Your Honor, and I will ask the Court to take judicial notice of Volume 28 of the Tax Court of the United States Reports covering the period from April 1, 1957 to September 30, 1957, particularly page 601 of such report entitled, Edell v. United States, continuing through the opinion therein and ending on page 625.

THE COURT: 625?

MR. MILLER: 625.

THE COURT: Well, I will take judicial notice of it but I do not have a copy of that volume.

MR. MILLER: May I hand it up to Your Honor?

(Volume was passed to the Court).

THE COURT: Do you all agree or disagree as to what the opinion is?

MR. BERLOW: There is no disagreement about that, Your Honor.

THE COURT: All right.

MR. MILLER: I would like to have Your Honor read it but if you want me to move ahead now and we will put it in evidence.

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[BY MR. MILLER:]

Q. Without going into the written opinion which the Court has, what was the outcome of the Tax Court proceedings? A. That Mr. Edell's excessive profits was and it was held that he owed excessive profits of \$150,000.

Q. And under your fee arrangements with Mr. Edell what fee were you entitled to as a result of the determination of excessive profits in the tax court? A. 30% of the difference between \$183,000 and \$150,000, which is \$9,900.

MR. MILLER: If the Court please, I would like to have this marked. I thought I would have a Jury trial or I wouldn't have gone to the expense of having so many exhibits made up.

THE DEPUTY CLERK: Plaintiff's Exhibit 17 marked for identification. (Document marked for identification).

[BY MR. MILLER:]

Q. Directing your attention to Plaintiff's Exhibit 17, will you tell us how your computation or fee under the excessive profits fee arrangement is arrived at? A. Well, the Justice Department had offered to settle the case on the basis of Mr. Edell's excessive profits of \$183,000.

The Tax Court, based upon the stipulation which had been filed as

90 to expenses and non-renegotiable papers and as to the finding of Judge Heron, Mr. Edell's services were worth \$150,000 rather than \$60,000 which the Government conceded, found that he was liable for excessive profits of \$150,000.

By the deduction of 150 from 183 to show the saving under our agreement the amount of \$33,000 and 30% of that was \$9900.

Q. What date was the determination made and the fee of \$9900 due under your fee arrangement? A. Well it is in the tax court volume. I forget when it came down. It was toward the end of 1956.

Q. By June 10, 1957? A. June the 10th, 1957, yes.

Q. And when did that determination become final? A. That becomes final when no appeal was taken.

Q. Was that 90 days? A. 90 days.

Q. Were you therefore asking interest upon the expiration of the 90 days from the date of the judgment on which the \$9900 was based on, or was handed down? A. Yes, that is right. Mr. Edell spoke to me about appealing the case.

91 Q. Was any decision made by your client, Mr. Edell, whether or not to appeal the Tax Court's determination? A. He spoke to me about it and I advised him the decision was based upon findings of fact by the trial judge, the Government witnesses had testified Mr. Edell had solicited business, there was no basis on which an appellate court would likely upset that finding, or find as to the value of the services which I thought was quite good, and I thought he would be wasting his money to try to appeal the decision and he agreed with that advice.

He accepted that advice and he didn't file an appeal. Then we had to proceed to determine how much of a tax credit he is entitled to and the calculations had to be made with the Justice Department. We had arranged to get the securities out of escrow and Mr. Edell paid the amount determined to be due and got his securities, the balance out of escrow.

THE COURT: This case, I haven't read your opinion yet, but this case settled only the renegotiation?

THE WITNESS: Yes, only the renegotiation. We had to settle the renegotiation and then the tax matters later.

THE COURT: I did not have any question about that but I was not just clear about whether this was renegotiation itself.

THE WITNESS: This was a case that was pending since 1949 only on renegotiation.

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[BY MR. MILLER:]

Q. Following the determination of the \$150,000 judgment of the United States Tax Court, then was it possible and did you make the necessary computations to give tax credit in order to approach and attempt solutions of the income tax problems? A. Yes, that was done and Mr. Edell got his securities out of escrow and I asked him to pay me the \$9900 and he said he would rather wait until the tax thing got settled and he would pay me all at once and I went along with that.

Q. What was then done about the income tax claims for 1943, 1944, 1945? A. Well then we proceeded to talk to the man of the Appellate Division, who was in charge of the income tax cases for the years 1943, 1944 and 1945. And he told us that he would accept a settlement based on allowing Mr. Edell about \$14,000 of expenses for each of the four years, and if he didn't accept that he would recommend a 50% civil fraud charge and I -- the issues involved in the income tax case were whether or not Mr. Edell had a family partnership with his brother and in the Tax Court proceeding on renegotiation, the Government produced an FBI agent who testified that he talked to Lewis Edell, who knew nothing about Harry Edell's business, and said he had no part in the business, and the people for whom Edell worked, they all testified they never knew of Lewis

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Edell, and had never heard of Lewis Edell.

I felt we couldn't get anywhere at all on the family partnership, that is the family partnership contention, and with that and the fact that they were claiming some of the expenses had been represented in a fraudulent way, they were going to impose a fraud penalty, I advised Mr. Edell to take the settlement that had been offered and that settlement -- if you want that --

THE COURT: Did he accept it?

THE WITNESS: Yes, he did accept it. He accepted the settlement that I recommended he take.

Q. [By Mr. Miller], Mr. Casey, would you look at the exhibits number --

THE DEPUTY CLERK: Plaintiff's Exhibit 18 marked for identification. (Document marked for identification).

[BY MR. MILLER]:

Q. Will you please look at Plaintiff's Exhibit 18 which has been placed up on the board and shown to opposing counsel?

Would you review that and tell the Court the basis of the settlement obtained by you for Mr. Edell with reference to the income taxes claimed for excessive additional income taxes, for the years 1943, 1944, and 1945? A. Well, remembering the Government had started off asking for \$175,000 of additional tax, as I testified before. In the first column --

94 Q. Wait a minute. Do you recall -- first it doesn't appear there. What was the Government's original claim for additional or total tax? A. \$175,000.

THE COURT: That was for these three years?

THE WITNESS: For the three years. \$19,393 for 1943; \$50,712 for 1944; and \$105,837 for 1945.

Q. [By Mr. Miller] All right now would you explain the relationship between the original claim of the Internal Revenue and the figure appearing on the board, the amount claimed by the Government for 1943?

MR. BERLOW: Before we go into this, I would like to make reference to the contract on which this suit is based, and make an objection to any questions which are phrased, and referred to language other than that used in the contract.

The contract which is attached to the complaint has been marked as an exhibit here. It states that I -- it is dated July 28th. And I am reading from the second paragraph. It is Plaintiff's Exhibit 6, Your Honor.

THE COURT: I have a copy of it attached to the complaint. It is dated July 28th, is it not?

MR. BERLOW: Yes, Your Honor, and the second paragraph -- after the second sentence -- after the first sentence it says:

95 "I hereby stipulate and agree that you may retain as and for your compensation 30% of the difference between the proposed deficiency."

Now I say that any testimony as to what for example, the amount claimed by the Government was is irrelevant, that what the testimony should be directed to is the proposed deficiency and not to any other figure because the fee is to be calculated on the basis of the contract that is sued upon.

So with that objection, I move to strike any testimony referring to any starting figure that is not the proposed deficiency.

THE COURT: What do you claim the proposed deficiency was, Mr. Berlow?

* * * * *

97 MR. MILLER: I believe, Your Honor, we can stipulate that the figures under the heading Amount Claimed by Government represents the amount of the income taxes claimed for the respective years by the Internal Revenue Service, after giving effect to the income return as the result of the renegotiation judgment.

MR. BERLOW: I think we can agree that what I am attempting to do is to relate this language to the language used in the contract.

Let us see if I understand it, that the language used in the contract is proposed deficiency and that this figure, which the total under the amount claimed by Government, is the proposed deficiencies from which has been subtracted that income which was repaid as a result of the renegotiation case? Is that correct?

98 MR. MILLER: No, not quite, because it ignores a portion of the same contract you are reading from.

THE COURT: Would it not be better to stipulate that \$175,000 was the amount of the proposed deficiency and after crediting on the proposed

deficiency of \$175,000, the sums which were credited as a result of the reduction in income from the renegotiation, that there remained whatever that figure is?

MR. MILLER: \$124,611.42.

MR. BERLOW: I will stipulate to that, that that is the method of calculation that was used, but it is our position that is not in accordance with the language of the contract; that isn't the proper method to be used but I can reserve that for argument.

THE COURT: You do claim though that \$175,000 was the proposed deficiency?

MR. BERLOW: Yes, that is correct.

[BY MR. MILLER:]

Q. Would you briefly tell us what figures are shown on Plaintiff's Exhibit marked Attorney's Fees for Reduction of Income Taxes? A. The first column is a recomputation of tax liability after taking the income which the Government claimed Mr. Edell had received in arriving at the proposed deficiency, \$26,000 for 1943.

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Q. Mr. Casey, I do not believe you have the right figures, so we will have the correct figures in the record will you step closer. A. I see them.

Q. What were you reading from? A. I am reading from -- I am telling you how I got the \$16,000 and what it represents.

Q. I see. A. This is a tax liability based on a recomputation of Mr. Edell's tax liability after eliminating from income \$26,000 which was the portion of the \$150,000 of excessive profits which Judge Heron in her decision determined to be attributable to 1943.

Q. I see. A. And eliminating \$26,000 of income and using all of the figures the Government used in arriving at its proposed deficiency, the amount Mr. Edell would owe for 1943 was reduced from \$19,393 to \$16,406.

Q. What then happened in the course of your handling the income tax matter for Mr. Edell to the \$16,406.52 claimed by the Government

100 for 1943? A. Well, in the settlement which the Internal Revenue Service told us we had to take or face a court penalty that eliminated additional expenses and after the elimination of those expenses the amount Mr. Edell owed was \$14,040.37 for 1943.

Q. That resulted then in a tax savings of what? A. Of \$2,366.

Q. And 15¢? A. And 15¢.

Q. And will you give us the same figures for 1944? A. For 1944 it was done exactly the same way except that we eliminated \$54,000 from income in 1944, that being the portion of \$150,000 of excessive profits which Judge Heron determined to be attributable to 1944.

Then we were able to eliminate additional expenses, and get additional expenses allowed over the expenses which the Internal Revenue Service had allowed in their proposed deficiency, which reduced the amount finally determined to be due for Mr. Edell for 1944 to \$21,265.84 and that produced a savings of \$11,641.87.

Q. Will you give us the comparative figures for the year 1945?

A. In 1945 we eliminated the remainder of the excessive profits judgment which amounted to \$70,000.

101 After eliminating that income from the proposed deficiency, the remaining tax liability was \$75,297.19 in negotiations with the Internal Revenue Service and the additional expenses were allowed which further reduced the liability to \$62,592.54.

Q. And what were the total savings effected by you as attorney for Mr. Edell for those years, 1943, 1944 and 1945? A. \$26,712.67, after giving Mr. Edell credit for the reduction of income on the excessive profit judgment.

Q. Under your fee arrangement with Mr. Edell what were you entitled to receive as attorney's fee for the income tax savings for those years? A. 30% of that.

MR. BERLOW: I object to that as being a conclusion.

THE COURT: I will overrule the objection.

THE WITNESS: 30% of that savings amounted to \$8,013.80.

[BY MR. MILLER:]

Q. As of what date was the income tax settlement made upon your claim? A fee of \$8,013.80 and interest commencing? A. February 1958, I believe.

Q. Was there any provision in your fee agreement with reference to income taxes reflecting the procedure to be followed after the renegotiation was determined? A. Yes, there was.

102 Q. Will you tell us what that was please? A. The last sentence of our agreement says, that I am to get 30% of the savings; and further, it is understood and agreed in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount paid by me to the United States as a result of renegotiation, and you will not receive 30% of the tax reduction resulting from any such renegotiation refined and that is the calculation I just described.

Q. You were reading the provisions of plaintiff's exhibit 6, were you? A. Yes.

Q. Did you have any unreimbursed expenses in connection with your handling of Mr. Edell's renegotiation and income tax matters? A. Yes, I did. I paid for with witnesses. I paid for the transcript. And I had various expenses for which I billed Mr. Edell.

Q. Did you send Mr. Edell any statement for fees and expenses? A. Yes, I did.

THE DEPUTY CLERK: Plaintiff's Exhibit 19 marked for identification.

103 MR. MILLER: Your Honor, Plaintiff's Exhibit 19 for identification is a letter to Mr. Edell from Mr. Casey dated March 20, 1958. It is a letter containing an enclosure. May I show it to counsel?

THE COURT: Yes, you may.

* * * * *

[BY MR. MILLER:]

Q. Mr. Casey, I hand you Plaintiff's Exhibit 19, being a letter of March 20th from yourself to Mr. Edell, will you tell the Court whether that letter was mailed to Mr. Edell by you or your office? A. Yes, it

100 for 1943? A. Well, in the settlement which the Internal Revenue Service told us we had to take or face a court penalty that eliminated additional expenses and after the elimination of those expenses the amount Mr. Edell owed was \$14,040.37 for 1943.

Q. That resulted then in a tax savings of what? A. Of \$2,366.

Q. And 15¢? A. And 15¢.

Q. And will you give us the same figures for 1944? A. For 1944 it was done exactly the same way except that we eliminated \$54,000 from income in 1944, that being the portion of \$150,000 of excessive profits which Judge Heron determined to be attributable to 1944.

Then we were able to eliminate additional expenses, and get additional expenses allowed over the expenses which the Internal Revenue Service had allowed in their proposed deficiency, which reduced the amount finally determined to be due for Mr. Edell for 1944 to \$21,265.84 and that produced a savings of \$11,641.87.

Q. Will you give us the comparative figures for the year 1945?

A. In 1945 we eliminated the remainder of the excessive profits judgment which amounted to \$70,000.

101 After eliminating that income from the proposed deficiency, the remaining tax liability was \$75,297.19 in negotiations with the Internal Revenue Service and the additional expenses were allowed which further reduced the liability to \$62,592.54.

Q. And what were the total savings effected by you as attorney for Mr. Edell for those years, 1943, 1944 and 1945? A. \$26,712.67, after giving Mr. Edell credit for the reduction of income on the excessive profit judgment.

Q. Under your fee arrangement with Mr. Edell what were you entitled to receive as attorney's fee for the income tax savings for those years? A. 30% of that.

MR. BERLOW: I object to that as being a conclusion.

THE COURT: I will overrule the objection.

THE WITNESS: 30% of that savings amounted to \$8,013.80.

[BY MR. MILLER:]

Q. As of what date was the income tax settlement made upon your claim? A fee of \$8,013.80 and interest commencing? A. February 1958, I believe.

Q. Was there any provision in your fee agreement with reference to income taxes reflecting the procedure to be followed after the renegotiation was determined? A. Yes, there was.

102 Q. Will you tell us what that was please? A. The last sentence of our agreement says, that I am to get 30% of the savings; and further, it is understood and agreed in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount paid by me to the United States as a result of renegotiation, and you will not receive 30% of the tax reduction resulting from any such renegotiation refined and that is the calculation I just described.

Q. You were reading the provisions of plaintiff's exhibit 6, were you? A. Yes.

Q. Did you have any unreimbursed expenses in connection with your handling of Mr. Edell's renegotiation and income tax matters?

A. Yes, I did. I paid for with witnesses. I paid for the transcript. And I had various expenses for which I billed Mr. Edell.

Q. Did you send Mr. Edell any statement for fees and expenses?

A. Yes, I did.

THE DEPUTY CLERK: Plaintiff's Exhibit 19 marked for identification.

103 MR. MILLER: Your Honor, Plaintiff's Exhibit 19 for identification is a letter to Mr. Edell from Mr. Casey dated March 20, 1958. It is a letter containing an enclosure. May I show it to counsel?

THE COURT: Yes, you may.

* * * * *

[BY MR. MILLER:]

Q. Mr. Casey, I hand you Plaintiff's Exhibit 19, being a letter of March 20th from yourself to Mr. Edell, will you tell the Court whether that letter was mailed to Mr. Edell by you or your office? A. Yes, it

was. It was a letter I wrote to Mr. Edell in March of 1958.

Q. Without going into the details, what was the nature of the request? A. I think the letter speaks for itself, asking him to pay his bill.

104 Q. I am asking you to examine the exhibit attached to that letter and tell the Court whether or not there is an itemized statement of expense unreimbursed which are claimed by you, Mr. Casey, to Mr. Edell? A. Yes, there was an itemized list of expenses incurred by my office, by Mr. Brady and by myself and payments for witnesses.

Q. Mr. Casey, which date of the letter pertains to the itemization of the \$1,003 claimed by you as unreimbursed? A. Well it is dated October 7, 1957. Attached to the bill and then there seem to be additional expenses -- these are earlier. December 1957 is the latest one of \$1003.50.

Q. What is the date of that itemization? A. October 17, 1957.

Q. What was the total mount of your itemized expenses? A. \$1003.50.

Q. Has any portion of the \$1,003.50 to you as an attorney for Mr. Edell, been paid to you or your office by Mr. Edell? A. No.

Q. The other items for expenses which appear in the exhibit have been paid in one form or another? Is that correct? A. I guess so.

105 Q. In other words, you are not making a claim for the other items of expense except the one dated October 7th. A. These were expenses that were incurred in 1956.

Q. I am correct then, Mr. Casey, in saying that the October 7th, 1957 itemization is the only expenses that you claim are unreimbursed? A. Yes, sir.

Q. I will hand you Plaintiff's Exhibits 20 and 21 and 22 and ask you if those are letters requesting on demand payment of fees for expenses set by you on the dates they bore to the defendant Mr. Edell? A. It is a letter of February 1959 which I sent; another one May 1959; and another one March 1959.

MR. MILLER: I will offer into evidence the exhibits starting with 19 through 22.

THE COURT: Have you seen the exhibits, Mr. Berlow?

MR. BERLOW: Yes, Your Honor, I have no objection to them.

THE COURT: All right, admitted.

(Exhibits 19 through 22 admitted into evidence).

[BY MR. MILLER:

Q. Have any of the items or fees of expenses which you have testified to been paid by Mr. Edell? A. No.

MR. MILLER: You may inquire, Mr. Berlow.

106

CROSS EXAMINATION

BY MR. BERLOW:

Q. Mr. Casey, you testified at the outset you had written a great many books and articles in reference to tax matters? Do you recall so testifying? And in addition to that you have represented many clients in tax cases in the Tax Court? A. Yes.

MR. MILLER: He didn't testify to representing many cases in the Tax Court.

[BY MR. BERLOW:]

Q. Have you represented many clients in the Tax Court? A. I have represented many clients in tax court procedure, yes.

Q. Prior to your meeting with Mr. Edell had you discussed with him at the time you met Mr. Edell, did you discuss with him your qualifications. A. No, I never discussed my qualifications with Mr. Edell. He sought me out.

Q. You never discussed any qualifications? A. I never felt any need to. Never, no.

Q. Prior to the case you tried for Mr. Edell, had you ever tried any renegotiation case at any time? A. Yes, I had, several.

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Q. In the Tax Court? A. Well I had tried several before the Renegotiation Board; I had some pending in the Tax Court that were settled, they were adversary proceedings, and Mr. Edell's case was the first renegotiation that I had to try all the way through to a decision.

Q. That was the first case that you tried in the Tax Court?

A. The first case I tried through to a decision in the Tax Court, yes.

Q. At the time you first met Mr. Edell, it was brought to your attention that he was represented by another attorney, Mr. Douglas Amann? A. I asked him about it, yes.

Q. And at that time did you inquire what was the -- what was the date when you first met Mr. Edell in Washington? Do you recall that?

A. In December of 1953.

Q. And when was it that you first spoke to Mr. Amann with reference to this matter? A. February of 1954.

Q. And it was in July or August that you entered into these agreements with Mr. Edell? A. That is right. They were reduced to writing in July, on the 28th and August 6th.

108 Q. Prior to the time you entered into these agreements, you ascertained Mr. Edell had paid Mr. Amann, had you not? A. Yes, I did.

Q. You determined he had paid him in full, had you not? A. He didn't pay Mr. Amann until Mr. Amann asked him for it.

Q. He made a payment to Mr. Amann as far as you were concerned that was satisfactory to Mr. Amann? A. He made a payment when Mr. Amann said he would accept, he would accept in satisfaction of the amount that would be due him.

Q. That was made a few months after Mr. Amann made the demand? Is that right? A. He paid Mr. Amann maybe ten thousand dollars throughout a period of years and when he said he didn't want Mr. Amann in the case and wanted to get him out, I told him I wouldn't take the case until Mr. Amann was satisfied.

Q. And Mr. Edell paid him and he was satisfied? A. He didn't pay him what he wanted but he paid him enough that he called me up and told me he wanted to get out of the case and he would accept what Mr. Edell had paid him and sent me the papers.

Q. Now you have testified as to a lawyer by the name of Mr. Socklow? A. Yes.

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Q. A matter in which he was involved? A. Yes.

Q. Did you send Mr. Edell a separate bill for the services which you had rendered in that matter? A. Well, for part of the services. I told Mr. Edell that.

Q. My question to you, did you send him a bill? A. I don't know whether I sent him a bill but he paid me \$500.00 for getting Mr. Socklow's attorney's lien released so he could get his \$42,000 out of Mr. Socklow's hands.

Q. Let me just show you without having it marked, show you this check dated February 23, 1955 in the amount of \$500.00 payable to your order, endorsed by you, and I ask you to read the notation on the left hand portion of the check, and after you have read that, I would like to ask you whether or not that doesn't refresh your recollection that you did bill Mr. Edell for your services rendered in the Socklow matter, and that this check was for payment in full? A. I guess it does. I said Mr. Edell paid me \$500.00 and I asked him for \$500.00 for handling that matter, which wasn't anticipated in the original payment. This is the \$500.00 he paid me at that time. This is February 5 and that would be about the right time.

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Q. You never sent him any other bill for the services rendered in the Socklow matter other than the bill rendered on that check?

A. Not that I know of.

Q. So the \$2500 retainer that was paid to you some time later by Mr. Edell, that was not, was it, in any sense payment for any services rendered in the Socklow matter? A. It was paid earlier, not later. The question said pay later. The \$2500, I believe, was paid earlier, not later.

Q. That is correct. I was mistaken but the retainer was paid earlier than this \$500.00 was paid in the Socklow matter and that represented full payment for that? A. That was payment only for that portion of the Socklow matter which involved my getting Mr. Edell's money released from Socklow's attorney lien.

It did not cover the work my office had to do to get Mr. Edell's \$42,000 released from the lien from the United States Government.

After we accomplished that we went on the basis of that that we could get the \$42,000 from Mr. Socklow and I got the order from Judge Kaufman agreeing that money need not be held for the security of the Government.

Then Mr. Socklow asserted a further claim, which was brand new, and said Mr. Edell hadn't paid him a couple thousand dollars for services he had rendered, in setting up the escrow agreement and getting

111 Mr. Edell in a position where he would not be subject to the lien, or the property would not be subject to the lien of the United States Government, based upon excessive profit judgment.

All that was done before the matter of the attorney-lien was brought up, and it was done over the period running from April 1954 to maybe August or September of 1954 and then we had this Mr. Socklow's attorney-lien to deal with. So there were two steps here.

Q. I think I asked you a very simple question, was any portion of the \$2500 -- A. Yes, the answer is yes.

Q. No portion of that was payable by Mr. Edell for work you did in the Socklow matter? Will you answer that yes or no? A. The answer is yes. It was payable for the work I had done generally for Mr. Edell up to the time the retainer agreement -- and before the retainer agreement I had worked on his real estate matter and the Government judgment in which Mr. Socklow was involved.

Q. The fact that no reference is made to that in the retainer agreement is a result of inadvertence on your part? Is that correct? A. No, it is not the result. It is because I didn't think it was necessary to go

112 into that kind of detail. This was \$2500 for generally apprising Mr. Edell on all of his problems. I treated it as one problem. He was involved with Mr. Socklow, Mr. Amann and all of them in this business. The \$500.00 was Mr. Socklow's attorney-lien.

Q. Now did there come a time when you entered into a written agreement with Mr. Edell? Would you tell us when that was? A. That

was in the latter part of July 1954. The agreement is dated July 28th and I assume it was at that time.

Q. That was the first agreement that you entered into with Mr. Edell? A. I believe it was the first written agreement, yes.

Q. Did he sign it? A. Yes.

Q. Did you sign it? A. Yes.

Q. Do you have it here today? A. Yes.

Q. Has that been marked? A. Oh, yes.

Q. It is those two agreements? A. The two agreements, yes.

113 Q. Prior to those two agreements was there not another agreement that had been entered into with Mr. Edell? A. I don't know. I don't recall that there was. I know that I talked to Mr. Edell and told him the understanding I had arrived at with him verbally up until the two agreements.

I don't recall whether or not it had previously been set up in a single agreement on paper or if it was whether we signed the agreement. I don't have any recollection of that and I do not find any copies of the agreement.

Q. Do you recall on June 23, 1960, in Mr. Dickey's office, you testified under oath in the form of a deposition in this case? A. Yes, sir.

Q. Can you recall testifying in that deposition as to a prior agreement? A. No, I don't recall whether I did or not. You told me that such an agreement existed.

MR. MILLER: I think I will object to the inquiry about the deposition without telling us about the page and what the deposition is about.

MR. BERLOW: I will have to find that portion.

THE WITNESS: Do you have that agreement?

MR. MILLER: Please, Mr. Casey.

MR. BERLOW: Let us, in order to save time, let us put it this way.

[BY MR. BERLOW:]

114 Q. And did there come a time, did there not, when it was brought to your attention as a matter of practice the Internal Revenue wanted the two separate agreements in this matter? A. No, no that wasn't the case. I testified to what happened there, that the Internal Revenue

had to file with the Committee on Practices for the tax matter which was before the Internal Revenue Service and not before the Tax Court.

I would have to file an agreement showing that I received a retainer, and since it was my understanding with Mr. Edell, I was only to get a \$2500 retainer, I thought the Internal Revenue should be split into two agreements and the \$2500 should be made applicable to the Internal Revenue retainer.

That is what I did. I set up the two agreements and Mr. Edell signed them on that basis. Whether there was a preceding agreement which were both together, I don't know. I do know the matter came up but whether there was a written agreement putting them together or if there was whether it was signed. I can't find a copy of one anyway.

Q. Let me read page 9 of the deposition, do you recall I asked you: knowing all of this you testified to and did there come a time when you negotiated this agreement with Mr. Edell which was finally reduced to the form of a written agreement for the first time in this document which
115 has been marked Plaintiff's Exhibit 1?

Do you recall giving the answer, well that is right. That was not for the first time. I explained there was a previous document which said the same thing, but the renegotiation and income tax were in one document and they were separated.

Do you recall then my asking you, the first document did you retain a copy of that?

And do you recall your answer: I don't think so. I called that agreement off and entered into a new one and it was destroyed I think, I think so.

Do you recall my asking you, have you made a search for copies of it and do you recall answering, I looked through the files. And do you recall my asking you, and you have been unable to find it? And do you recall your answer, yes? And then do you recall my asking you the reason you stated for the alteration or destruction of the original agreement and entering into the new agreement, was the original agreement contravened the rules of the Internal Revenue Department?

And do you recall your answer that, no, it didn't contravene the rules, it clouded up the judgment of the Committee on Practices as to whether an adequate retainer had been received on a tax matter and I thought it best to separate it.

116 Does that refresh your recollection that there was -- A. That refreshes my recollection --

Q. My question is, does that refresh your recollection that there was an original agreement in this case that was destroyed? A. No, it does not. I don't know whether I was wrong then or wrong now. I don't know whether there was an original agreement. If there was, Mr. Edell would have a copy of it. I know we decided to make it two agreements, whether that decision was arrived at before we prepared a single agreement, I don't know. And if I said I knew then, I was mistaken then, and I have searched and thought about it and this is my testimony now.

Q. Your testimony now is, you don't know whether this testimony is correct or the testimony that you gave then, is that correct? A. I don't know. I don't know that there was an earlier agreement that was reduced to writing. I don't know whether there was or not.

Q. Did there come a time when Mr. Edell did make a payment to you totalling \$2500? You testified that that took place in August.

A. Three payments, yes.

117 Q. Three payments and you can not testify whether that payment was made before or after the new agreement was drawn up, can you? A. Oh, yes, I can.

Q. You don't know whether there was an original agreement, do you? A. Yes. You said a new agreement. I am talking about the agreement that existed and the payments were made afterwards.

Q. Do you know insofar as the original agreement was concerned? A. I don't know whether there was an original agreement.

Q. And so you don't know whether that original agreement referred to a figure of \$138,000 or a figure of \$150,000, or \$183,000 or \$138,000? A. I don't know whether there was an agreement, and if

there was, I don't know what it said, except I knew what it was supposed to reflect.

Q. But there did come a time that you prepared two separate agreements? A. Yes, so far as they were the first agreements prepared.

Q. So as far as you know now -- ?

MR. MILLER: Your Honor please, I am going to object. So far as the new agreement, because in fairness he kept saying in the deposition he thinks indicating uncertainty.

118 THE COURT: I thought the witness had testified some figure was in an agreement by mistake and this was redone and reexecuted? Isn't that right?

MR. BERLOW: No, Your Honor, the testimony in the deposition as I understand it was, there was an original agreement and that agreement was destroyed.

Now it is developing there was still another agreement, two separate agreements. There came a time when there were two separate agreements drawn by Mr. Casey and in the second agreement there was a figure inserted of \$138,000.

MR. MILLER: Your Honor please, I am going to object to the characterization as to the second agreement. It has never been established that there was ever a first either in the deposition or now.

THE COURT: I will sustain the objection.

[BY MR. BERLOW:]

Q. And the agreement that is the basis for the suit in this case insofar as the renegotiation case is concerned contains reference to a Government offer of \$183,000? A. Yes, sir, it does.

Q. Now prior to that time that same agreement did it have in it the figure of \$138,000? A. Yes, the previous version of the same agreement.

Q. You explained to Mr. Edell that was a typographical error?

119 A. I explained it was a mistake, yes.

Q. Was that after Mr. Amann had delivered all of Mr. Edell's papers to you? A. Yes.

Q. Was it after Mr. Edell had paid a portion of the retainer?

A. No, it was before Mr. Edell had paid any portion of the retainer.

Q. And Mr. Edell, after you explained that to him, the error, he executed a new agreement which contained the figure of \$183,000?

A. Yes, he did.

Q. Now the agreement which is the basis for the claim in turn makes reference to a Justice Department offer.

Do you recall that portion of the agreement? A. Yes.

Q. Specifically it states that you may retain as and for your compensation 30% of the difference between the Justice Department's offer of \$183,000 and the final settlement of the dispute.

Now included in the Justice Department's offer was a certain figure allowed the tax payer for expenses. Do you recall what that figure was? A. I believe it was something around \$60,000.

Q. And do you recall how much it was per year? A. I had a note here on that. I believe --

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Q. Would it refresh your recollection if I showed you Defendant's Exhibit 3, which was marked for identification in the course of the deposition, and ask you to look at that and see if that refreshes your recollection as to what the offer was insofar as the expenses were concerned?

A. Well, the offer was for a total settlement and in arriving at the offer, certain expenses were allowed and those expenses were \$14,400 for 1943; \$18,300 for 1944; and \$20,700 for 1945.

Q. Would you look at the '45 figures and see if there is an allowance for attorney's fees in addition to that? A. Yes, but that was attributable to business that was taken out of renegotiation in the stipulation.

In the stipulation we got credit for that \$10,000 because we took \$40,000 that could have been renegotiable which was collected by these legal expenses in 1946.

They were taken off the top. So we got credit for those expenses in the stipulation that we made because when we reduced the negotiable income from 382 to 342.

Q. Now this settlement proposal had been made to Mr. Amann originally, had it not? A. Yes. No, I think it was made to Mr. Pittman.

Q. To Mr. Pittman and Roberts, the Pittman and Roberts firm. I think it was then passed on to Mr. Amann. It was in response to the Pittman and Roberts offer.

121 Q. At some time you did testify a great many records were delivered to your office in reference to this matter? A. Yes, sir.

Q. Do any of those records have reference to the expenses of Mr. Edell? A. Well, there were check stubs, there were certain railroad tickets, and hotel bills, all which added up to only a few thousand dollars.

Q. Do you know whether or not there were any other records that had been delivered to the United States Government Attorney's Office prior to the time that you got into the case? A. Nobody ever told me there was any delivered to the United States Government. There were certain records that were down there with the accountant firm named Scovell, Wellington and Co. in Washington and I couldn't get those because Mr. Edell hadn't paid them the fee they wanted so they held the papers and I talked to Mr. Edell about it and I never did get those papers.

They were just reconstructions.

Q. Insofar as you know the settlement offer proposed by the attorneys representing the United States Government, insofar as it related to expenses was not based upon any documentary evidence whatsoever? A. I don't know.

122 Q. In your experience as a tax attorney, has it ever been brought to your attention that in the settlement of a litigated tax matter, the Government would stipulate to expenses when they were not aware of any documentary evidence to substantiate those expenses? A. Oh, they were aware of each documentary evidence that existed.

Q. Would you tell me what those were? A. They had FBI agents looking at these records of Mr. Edell's.

Q. Were you present when the FBI --

MR. MILLER: Just a minute, wait until he finishes.

MR. BERLOW: Excuse me.

[THE WITNESS:] No.

Q. [By Mr. Berlow] But it was brought to your attention?

A. They told me they had FBI reports on all of Mr. Edell's expenses and non-expenses.

Q. They never exhibited those reports to you? A. No, they wouldn't show them to me nor would they show them to Mr. Amann, because Mr. Amann had asked for them and they wouldn't show them to him.

Q. Other than the FBI agent's reports do you know of any other basis the Government attorneys had in concluding in 1945 that Mr. Edell's expenses were \$20,720? A. They told me they were willing to settle --

123 Q. No, my question is do you know of any evidence other than the evidence of the FBI reports which the Department of Justice lawyers had upon which they based a settlement offer of \$20,720 --? A. They had no evidence reports except the reports that the FBI agents had. They had seen those records and they worked on the basis of those records.

Q. Do you know whether the FBI investigation, which was the basis for the settlement proposal, that contained in those were reference to Mr. Edell's check book and check stubs which he had kept all during this period of time would show what the expenses were? A. I saw those check books, they were all made out to cash. There was no way of identifying what they were for. I asked Mr. Edell what they were for and he couldn't explain them for me except his allowance -- on some items.

Q. From your examination of the records that Mr. Edell brought into you, you could not, I think your testimony is, you could not substantiate more than \$5,000 of expenses per year? Is that your testimony?

A. On the basis of my reconstruction of what it would cost Mr. Edell to make the trips and stay at the hotels and his diary, and his correspondence, and all I was able to specify, showed we could not reconstruct more than \$5 or \$6,000 a year.

124 Q. And the Government's proposal of \$20,500 for the year 1944 was based upon records that never came to your attention? A. Oh no, it wasn't. Not that I recall. I don't know that it was based on any records at all.

Q. You don't know what it was based on other than FBI reports?

A. That is all I have to base it on, the investigation of Mr. Edell's records and his books were lost and in an attempt to dispose of the legal issue, and being generous, they didn't think they could prove these allowances of all these expenses in Court. I had to agree with them.

Q. When you say they were being generous there was a lawyer representing the Department of Justice at that time by the name of Harlem Leathers? A. Mr. Prentice had the case at that time.

Q. Do you know where Mr. Prentice is now? A. No, I don't.

Q. And he told you at that time, it is your testimony he told you the figure of \$20,000 for expenses in 1945 was based upon a feeling of generosity he had toward Mr. Edell? A. No, I didn't testify to that at all.

Q. You never? A. No, I didn't. He had no feeling of generosity to Mr. Edell. I said he was allowed more expenses than he felt
125 he would be able to prove in Court in order to dispose of the legal issue and in order to remove from the Government the hazard that we would be able to win in Court on the legal issue so they would collect nothing.

Q. He was willing to allow this \$20,000 of expenses even though he knew of no evidence? A. He wasn't allowing \$20,000 of expenses. He was offering a settlement and in arriving at that settlement that was one of the features of calculations. It wasn't allowing any expenses.

THE COURT: Mr. Berlow we are going now to suspend for the day until 10:00 tomorrow.

(The Hearing was concluded at 3:45 p.m. until the following morning).

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Washington, D.C.
November 21, 1962

* * * * *

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WILLIAM J. CASEY

the plaintiff, resumed the stand and testified further as follows:

FURTHER DIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Casey, in your previous testimony in direct examination, you described the outcome of the claims for income taxes for the years 1943, 1944 and 1945. Will you tell the Court why you did nothing as to the tax years 1946 and 1947? A. Well, as I testified in direct examination, in conversations I had with the Internal Revenue Service immediately after I took on the case, it was agreed that it would be necessary to first clear up the renegotiation matter and determine how much excessive profits Mr. Edell should return to the Govern-
130 ment. Then the tax returns for the years 1943, 1944, 1945, had been the subject of a thirty-day letter, a Mr. Amann had protested the deficiency and that was before the Appellate Division of the Internal Revenue Service, whereas the 1946, 1947 returns were still in the hands of the field agent, that matter had not yet gone to the Appellate Division and it was determined that these years should be taken up chronologically from the beginning to the end. And after we had arrived at an agreement, a settlement on 1943, 1944 and 1945, I recommended to Mr. Edell that he accept that settlement for those years because otherwise he would have had to face a civil fraud penalty of 50% on top of the tax deficiency and I saw no basis on which the settlement could be improved and the civil fraud penalty, indeed, would have made it a great deal worse.

Then, a lawyer -- Mr. Edell delayed making a decision on this recommendation and he sent up to my office a lawyer named Laurens Williams, who had been a fairly high official in the Treasury Department, on taxes, a lawyer from Michigan, and Mr. Williams said to me that

he and Mr. Edell had lived together at the University Club and they used to hang around evenings, talked about Mr. Edell's problems, and Mr. Edell, he wanted me to understand --

MR. BERLOW: I object to anything that Mr. Williams said unless at this time it is established that there is some agency relationship between Williams and Edell.

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THE WITNESS: I was about to stop.

BY MR. MILLER:

Q. Tell the Court first what relationship existed between Mr. Edell, the defendant, and Mr. Laurens Williams.

THE COURT: Now, this isn't something that Mr. Williams told you, is it?

THE WITNESS: Well, Mr. Edell called me and told me, he asked me to talk to Mr. Williams.

THE COURT: Then, you first have to tell us what Mr. Edell told you.

THE WITNESS: Mr. Edell hesitated --

BY MR. MILLER:

Q. What did Mr. Edell tell you about Mr. Williams' status?

A. He asked me to discuss his matter, the question of the income tax settlement with Mr. Williams because he didn't feel capable of making a decision and he wanted Mr. Williams to make the decision for him. And on that basis, Mr. Williams described himself as Mr. Edell's alter ego, he said:

"I am the client, you are the lawyer, I am acting for Mr. Edell, but not as a lawyer, I am acting for him as a principal and I am to make an intelligent decision and Mr. Edell is going to ratify it on the basis of your recommendation and I would like you to give me the facts on the situation."

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That was the way Mr. Edell described Mr. Williams and that is the way Mr. Williams described himself.

THE COURT: Very well, under those circumstances, I will rule that the witness may say what was said in a conversation with Mr. Williams.

THE WITNESS: Well, Mr. Williams said that Mr. Edell was in a bad state of health and mind --

THE COURT: Well, now, just a minute. You ask the question.

BY MR. MILLER:

Q. Mr. Casey, tell us what the discussion, if anything, was you had with Mr. Edell or Mr. Williams concerning either the disposition of the proposed settlement or recommended settlement on the 1943, 1944, 1945 taxes and the 1946, 1947 taxes? **A.** Well, I recommended to Mr. Edell that he accept the settlement that had been worked out with the Internal Revenue Service on 1943, 1944, 1945. Mr. Edell said he wanted Mr. Williams to make that decision for him.

I reviewed the entire situation with Mr. Williams and Mr. Williams sent a Mr. Liles, an associate of his in his office, up and the two of them went over the whole matter, all the details and all the records, and then Mr. Williams went down to see Mr. Korr, the conferee of the Internal Revenue Service who was handling the matter in the Appellate Division, and Mr. Williams then told me that he thought that we had made the best settlement possible and that Mr. Edell should
133 accept it.

He recommended that Mr. Edell accept it, Mr. Edell did accept it and on that basis, the basis we had recommended, 1943, 1944 and 1945 were settled. We told the Internal Revenue Service we would settle those years on the basis that had been worked out.

Then it became time to get the 1946 and 1947. I had never had the books on 1946 and 1947, because Mr. Edell's accountant of the war years, Louis Appel, had died and Mr. Edell said that he had lost all his books. But he had new accountants in the postwar years, 1946, 1947 and on, they were a firm called Oppenheim, Payson, and somebody else, I haven't got the full name.

MR. BERLOW: Appel, the same name as the first name.

THE WITNESS: A different Appel, this was another Appel, he was Appel's brother. Anyway, Mr. Edell's matters there were in the hands of a very capable man whom I knew, named Arthur Dixon, and the understanding had always been that the accountants would continue to handle this thing at the field agent's, and if they needed any help, they would let us know. That was the understanding with Mr. Edell, in various conversations, after our original agreement, he said to have a talk with the accountants because that was the way to handle it and I agreed, because that is our practice, let the accountants carry it as far as they can.

134 In any event, after we had settled 1943, 1944 and 1945, Mr. Williams was given a power of attorney by Mr. Edell and this power of attorney ran to Mr. Williams, Mr. Brady, and myself. And Mr. Williams took the initiative, with Mr. Edell's concurrence and my concurrence, and I don't know whether the accountants settled 1946, 1947, or whether Mr. Williams did, or whether they did together. All I know is that we did not and we never claimed any compensation for 1946, 1947. By understanding and tacit consent, it was handled by the accountants and they concluded that part of the job.

BY MR. MILLER:

Q. I want to ask you clearly and specifically why did you or your firm not handle 1946, 1947 income tax? A. Because Mr. Edell told us to let the accountants handle it and never told us to take it on, and the accountants did conclude it.

Q. Did you have any conversation with Mr. Edell either about letting the accountants or Mr. Williams handle 1946 and 1947?

A. Oh, yes. I had that discussion with Mr. Edell as soon as I found out that among the papers I received, I had no records and no information about 1946 and 1947. I said, where is this? He said the accountants have it, let them handle it as far as they can, and I had enough on my hands and I agreed.

135 Q. Did you have any conversation with Mr. Edell about the fee contract or fee relationship regarding 1946 and 1947 income tax, if so, relate it. A. Well, we never discussed the fee, I just never billed for 1946, 1947, never felt -- never made any claim for compensation for those years. The final claim for what we had done was renegotiation and the taxes for 1943, 1944 and 1945.

Q. Can you give us the dates on which Mr. Edell told you not to handle 1946 and 1947, but to let the accountants or others do it, the day or dates? A. The first date was sometime in the latter part of August or the early part of September, after I had completed my review of the papers.

Q. Of what year? A. Of 1954, after I had completed my review of the papers that Mr. Amann had sent me and I told him I didn't have the 1946, 1947 information. He said, well, the accountants have it and let them handle it as long as they could. I meanwhile talked to the field, the --

Q. When subsequent to that time, if he did, did he tell you to let the accountants handle it and you were not to handle the 1946, 1947 returns? A. Well, this is a matter that rested the way it was left in August 1954 and stayed that way until we got the renegotiation out of the way and we addressed ourselves to the tax deficiencies, which was in the early part of somewhere in the middle of 1954 and Mr. Edell
136 reiterated -- by that time I had established a working relationship with Mr. Dixon and it wasn't true to say I didn't handle it, really, because I was supervising it.

MR. BERLOW: Objection, Your Honor, this isn't responsive to the question at all.

BY MR. MILLER:

Q. The question was, when, after the determination of the tax court and the renegotiation, if you did, did you have a conversation with Mr. Edell in which he told you not to handle the 1946, 1947?

THE COURT: What you want is the date, is it not?

MR. MILLER: The date.

THE WITNESS: Well, I can only estimate the time.

BY MR. MILLER:

Q. Your best recollection of the date following the renegotiation.

A. Sometime around, well, I recall that I met Mr. Edell in San Francisco in August of 1946 and we discussed the matter and I told him that --

MR. BERLOW: I object to what he told him, Your Honor.

THE COURT: The objection is sustained. The only question pending is the date.

THE WITNESS: Well, the best of my recollection, it was sometime in August of 1956, I was told, and again in the middle of

137 July or August of 1956, when we had the decision.

BY MR. MILLER:

Q. Now, one other matter, Mr. Casey, would you tell the Court the time that you spent handling Mr. Edell's problems, giving the amount of time and the reasonable value of your services therefor?

A. You mean the time of my office or my personal time?

Q. Well, first your personal time.

MR. BERLOW: Your Honor, I object to any testimony as to quantum meruit, the value of his services, in view of the fact that the suit is based upon a written contingent fee contract. It may be that Your Honor will --

THE COURT: Didn't you say yesterday that you were claiming that if they were entitled to anything, it would be on the basis of meruit?

MR. BERLOW: Yes. My view is, I am interested in saving time, it may be that Your Honor will rule that the contracts have been breached and are not enforceable and then there would be a question of quantum meruit and I would have no objection, assuming that is Your Honor's ruling, to recalling the witness and going into that proof. I am just interested in saving time at this time.

MR. MILLER: It isn't going to save time to recall a witness from New York, Your Honor.

138 THE COURT: Mr. Miller, you know, when you recalled him, you said you had a couple of questions.

MR. MILLER: Two questions, yes, ma'am; he made them a little long, but one question was 1946, 1947, and the second is the reasonable value of the services.

THE COURT: I will overrule the objection, he may answer.

THE WITNESS: I estimate that I spent 234 hours in all phases of this matter.

BY MR. MILLER:

Q. Can you tell us on what that is based, please?

THE COURT: How many hours did you say?

THE WITNESS: 234. It is based on an analysis of my diaries and an analysis of my correspondence and the records and files of the case, and on my recollection of the amount of time spent in court and on a number of trips, one trip I took to Washington, it is reconstructed.

BY MR. MILLER:

Q. Can you give us the basis of your reconstruction briefly, Mr. Casey, please? A. Yes, in 1954, I spent 20 hours with Mr. Edell, 6 hours with Mr. Amann, 4 hours with Mr. Dickson of the Oppenheim firm, the accountants, 5 hours with Mr. Weiss of the Internal Revenue Service, 3 meetings, 8 hours in the analysis of files and records, Mr. Edell's correspondence and records were left with us, 12 hours in the proceedings with relation to the escrow and order of Judge Kaufman
139 to get Mr. Edell's money released from the lien of the judgment which the Government had taken against him, about 16 hours in research of the law on its application to the Fine case, the French case and the Wolff case and its application to Mr. Edell's situation in this kind of work --

Q. Just a moment, now, that is for 1954? A. That is during 1954.

Q. Can you give me the total number of hours spent by you, necessary to Mr. Edell's matters in 1954? A. It amounts to about 81 hours.

Q. I believe it is 71, isn't it? Would you recheck your figures?

MR. BERLOW: Your Honor, if the witness is testifying from a memorandum, I don't have any objection to his doing that, but I think the memorandum should be marked for identification so that it can become a part of the record in this case.

THE COURT: I don't think it is entitled to be made a part of the record, but you may examine it at the proper time, if you want to.

THE WITNESS: This is a note I made myself.

BY MR. MILLER:

Q. Well, would you take your pencil and compute the number of hours you testified you spent in 1954? A. 81 -- wait a minute, I am sorry, 71.

140 Q. Now, take the next year, tell us the number of hours in each category and then give a total for that year. A. 1955, 10 hours, mostly on conferences and correspondence and telephone calls with Mr. Edell. 1956, there were 8 hours of interviews with witnesses, there were 22 hours with Mr. Edell, there were 10 hours with meetings with the Justice Department, there were 16 hours in the preparation of the case, there were 10 hours in interviews with witnesses in Washington, there were 24 hours in the trial of the case and the work surrounding the trial after the court closed, and so on. There were 40 hours on the initial tax court brief --

Q. 40? A. Yes, 40. 10 hours on the reply brief, there were 6 hours on the computations and the adjustment of the credit, the tax credit and getting the money out of escrow, and there were 12 hours on a trip to Washington. And I want to modify my earlier testimony, because I note I did not include 5 trips to Washington made during 1954, when I had to come down and have conferences with the Justice Department and the renegotiation people looking toward the settlement.

Q. How many hours should be added to the 71 hours you testified to in 1954? A. That is 30 hours in 1954 and 10 hours in 1955 -- 32 hours in 1954 and 8 hours in 1955, there was one trip early in 1955.

Q. All right. Then the total hours for 1954 as corrected --

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A. Become 103.

Q. -- Would be 103 hours. For 1955 as corrected would be --

A. Would become 18.

Q. And would you figure the total hours in 1956? A. 158.

And the total is 274.

Q. Wait a minute, let's get 1956 first. A. 158 is 1956.

Q. 158 for 1956? A. Yes.

Q. Did you spent any time in 1957? A. Yes, I spent --

Q. By the way, Mr. Casey, may I ask, wasn't 1957 the year in which the hearing was held in the Tax Court? A. No, that was in 1956.

Q. The opinion was handed down in June of 1957. Did it go over that long? A. Yes.

Q. I see. May of 1956, I am sorry, you are correct. Do you have any time beyond 1956 for efforts on behalf of Mr. Edell for the matters in controversy here? A. Yes, in 1957, I spent 6 hours on the adjustment of the credit in escrow which I put in 1956, that was in 1957. And the trip to Washington, two trips to Washington, 12 hours were in 1957 when I went down there to try to get them, at Mr. Edell's request,

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to try to get the Justice Department to take some of the money in 1957 and some in 1958 for Mr. Edell's tax convenience, so I had 20 hours on that in 1957, and I had 10 hours in 1957, beginning the handling of the tax matter.

Q. What is your total number of hours for 1957? A. It is 28 hours in 1957.

Q. Does that, however, include an item or items from 1956?

A. Yes.

Q. Make the correction, please. A. The correction, 8 hours are shifted from 1956 to 1957, so I had 140 in 1957.

Q. You shifted how many hours? A. 18 hours, the trip to Washington and the adjustment of the tax credits.

Q. So, therefore, 1956 is reduced from 158 by 18 to 140, is that correct? A. Yes, sir.

Q. 140 for 1956. Then, give me the corrected total of hours for 1957. A. 28 hours is 1957.

Q. Now, can you give me the total number of hours for the four years of time spent on Mr. Edell's matters? A. Well, it is more than that, there was time in 1958 because that is when we finally closed out the tax matter and that is when we had the conferences with Mr. Williams.

143 Q. All right, give me the time, then, in 1958. A. 1958, I spent about 36 hours on the tax matter and in meetings with Mr. Williams and Mr. Liles, Mr. Williams' associate, and a certain amount of correspondence and communication with Mr. Edell.

Q. So, your total for 1958 would then be what? A. 36.

Q. 36? A. Yes.

Q. Do you have any additional time beyond 1958? A. No, I think we sent him a bill around 1958. My additional time has been in trying to collect the --

Q. All right, we won't go into that. Now, would you compute for us the total number of hours you spent for the years 1954 through 1958, please? A. Yes. It comes to 320 hours.

Q. Is that 325? A. Well, my calculation here is 320.

Q. All right. During those years, Mr. Casey, what did you charge for and what was the reasonable value of your time as an attorney in this type of matter? A. Well, my regular time rate was \$60 an hour in those years.

Q. Did you regularly charge and receive fees at the rate of \$60 per hour for work of similar type and character in the community in which it was performed in the years that you have testified?
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A. When I worked on a time basis, that is what I charged and that is what I was paid.

Q. Would you tell us, then, the reasonable value of the services totaling 325 hours at a fair and reasonable rate? A. 320 is \$19,200.

Q. \$19,200. Mr. Casey, were there any employees in your office, whose salaries you paid, who performed services for Mr. Edell, whose time in such performance is known to you? A. Yes.

Q. Now, first of all, does that include Mr. Brady? A. Well, there was Mr. Benedict, Mr. Brady and Mr. Sopenheim.

Q. Let's exclude Mr. Brady, because he is here and will testify. A. All right.

Q. Do you have information as to the amount of time and the fair rate for such time of any other employees, besides Mr. Brady, spent necessarily on Mr. Edell's problems? A. I reviewed the record, I have talked to Mr. Benedict and my estimate and his estimate is that he spent 90 hours during the year 1954.

Q. And what was the reasonable hourly rate for Mr. Benedict's services at that time? A. Mr. Benedict, we charged, we billed his
145 time at \$30 an hour.

Q. Would you tell us just briefly what his qualifications were upon which his professional charges and services were valued as an attorney? A. He was a lawyer of 25 years' experience, he had worked in the New York office of the Renegotiation Board, he had a great deal of experience in tax and corporate financial matters and that was the regular rate on which we billed for his time.

Q. Is the value of his services on 90 hours at \$30 an hour for a total of \$2,700? A. That is the way I would calculate it, yes.

Q. Did you have any other employees except Mr. Brady who worked on this matter? A. I had Mr. Sopenheim, who was not an employee, Mr. Sopenheim was employed on a free lance basis. We paid him on the job or on an hourly basis or a daily basis, depending upon the work, and he spent 16 hours going through Tax Court Dockets and getting information and making up tables for me on renegotiation cases involving service figures and distributors, and I billed Mr. Sopenheim's time at \$30 an hour. He was also a lawyer of 15 years' experience, graduated from Columbia Law School.

Q. What skill did he possess in the field in which he was working?

A. Well, he had an accounting background, he had been Associate
146 General Counsel of the War Stabilization Board, Wage Stabilization Board, during the Korean war and he was very familiar with administrative procedures and very skilled in research.

Q. Is the fair and reasonable value of his time for 16 hours at the rate of \$30 an hour or a total of \$480 for work necessarily performed on behalf of Mr. Edell? A. Yes.

MR. MILLER: You may examine.

CROSS EXAMINATION
(Resumed)

BY MR. BERLOW:

Q. Of course, Mr. Casey, at no time did you ever discuss with Mr. Edell your hourly charge of \$60 an hour, did you? A. Oh, yes.

Q. When was it? A. Well, Mr. Edell came out --

Q. Would you give a date, please? A. Yes, it was in July, the early part of July, 1954, when he came out and asked me to take this particular matter on a contingent basis, because he couldn't pay my time charge, he didn't want to pay it.

Q. And at that time, of course, the Socklo matter was not mentioned, was it? A. Oh, yes, that was part -- the Socklo attorney's lien matter was not mentioned, but the real estate matter and the

147 Justice Department lien was part of the problem. I had already been working on that problem. I also told Mr. Edell --

* * * * *

MR. BERLOW: I submit that his answer is not responsive.

THE COURT: Well, we will see.

Read the question, please, and we will hear the answer as far as it went.

(The record was read by the reporter as follows:)

"Q. And at that time, of course, the Socklo matter was not mentioned, was it?

"A. Oh, yes, that was part -- the Socklo attorney's lien matter was not mentioned, but the real estate matter and the Justice Department lien was part of the problem. I had already been working on that problem. I also told Mr. Edell --"

THE COURT: That is where the interruption was.

THE WITNESS: The question was whether I had told Mr. Edell my time charges.

BY MR. BERLOW:

148 Q. No, the question was, at that time in 1954, was the Socklo matter mentioned, and I understand from your answer that it was mentioned. A. It depends on what you mean by the Socklo matter.

Q. I mean any matters -- was any matter in which Mr. Socklo was involved mentioned at that time, and would you please answer the question yes or no? A. Well, I can't answer the question yes or no.

Q. Then, we will go on to another question. In your time charges, you have included a charge for matters in which Mr. Socklo was involved. A. No, I have not.

Q. In your prior testimony, when Mr. Miller just inquired, would you go through that memorandum you have in front of you and see if that doesn't refresh your recollection that, about three minutes ago, you made reference to hours spent on the Socklo matter.

A. No, I don't think I did. I made reference to hours spent in releasing Mr. Edell's money from the lien of the Justice Department, in which we had to go to court with Judge Kaufman in the Southern District, and that is not the Socklo matter. The Socklo matter involved the attorney's lien and we excluded that.

Q. And that has been excluded? A. Yes.

Q. From this hourly calculation? A. Yes.

* * * * *

151 Q. Are you now asserting a claim in this case for services rendered in any matters in which Mr. Socklo was involved? A. Yes, as part of the quantum meruit claim, I am including matters in which Mr. Socklo was involved, upon which I did not know Mr. Socklo was involved, and these are matters involving my dealings with the Justice Department and the District Court of the Southern District of New York, in which I had to get an order to release Mr. Edell's money from the lien of the Justice Department's judgment and --

Q. So, when you said -- A. And -- I haven't completed my explanation -- and insofar as I subsequently had to deal with Mr. Socklo directly, in negotiating with him for the release of those same funds after he had later asserted an attorney's lien and I had to deal with him and I had to prepare an agreement on the basis of which we settled the matter, I am not raising any claim with respect to that matter, that is the matter I testified about on my deposition, that is the matter for which Mr. Edell paid me separately \$500.

152 Q. So there was -- when I made reference in my question in the deposition to the Socklo matter, as I referred to it, there were two Socklo matters and I failed to mention both? A. The first matter wasn't a Socklo matter. It was a Justice Department matter. It was an Edell matter, it was Edell v. Justice Department, Socklo wasn't there, he wasn't a party to it.

Q. Have you reviewed the pretrial order in this case, have you ever read it? A. The pretrial order?

Q. Have you read any of the pleadings that have been filed in this case? A. Yes, I have read the pleadings.

Q. And in any of the pleadings, including the complaint, the pretrial statement prepared by your counsel and the stipulations mentioned therein, the pretrial order prepared by the pretrial commissioner of this court, was it ever brought to your attention that there is mentioned in any of those documents any matters other than the renegotiation matters and the matters arising from the income tax deficiency? A. No.

Q. Now, to go on to another matter, Mr. Casey --

THE COURT: Before you leave that matter, I would like to ask you this, you say that this was a matter that related to Mr. Edell and the Government. Does that come within the scope of either the renegotiation or the income tax returns for 1943, 1944 and 1945?

153 THE WITNESS: Well, it was treated as part of the renegotiation problem, because the judgment which the Government got against Mr. Edell on the basis of his renegotiation liability was a judgment which was tying up this property and I had begun to work on it and had worked on it at Mr. Edell's request, before we ever had an agreement and I continued to work on it as part of the total agreement. And I told Mr. Edell that I would have to have a \$2,500 retainer to justify that, some of the work I had already done and that was included in what I had already done. It was related to the renegotiation matter and we treated it as such.

THE COURT: Go ahead.

BY MR. BERLOW:

Q. Did you bill Mr. Edell separately for that matter? A. No.

Q. Did you receive a \$500 check from Mr. Edell on February 23, 1955, for services rendered in the Socklo matter? A. That was for the attorney's lien as I testified yesterday.

Q. It was Socklo's attorney's lien, wasn't it? A. Yes.

Q. Would it be fair to refer to the matter in which Mr. Socklo's attorney's lien was involved as the Socklo matter? A. That would be certainly the way to describe the matter.

154 Q. And the \$500 was paid for that matter. A. Yes.

Q. And you rendered a bill in that matter? A. The attorney's lien, yes.

Q. And you rendered no other bill in connection with that matter since that time? A. No.

Q. Now, as to other payments made by Mr. Edell, you testified as to certain disbursements, and there is a balance due on the disbursements of \$1,035, is that correct? A. Yes.

Q. Now, in the course of this trial, there was offered or exhibited a transcript of the trial that took place before, in the Tax Court? A. Yes.

Q. Was that transcript paid for? A. Yes.

Q. Who paid for it? A. Mr. Edell paid for it.

Q. Now, did you bill him for the disbursement in connection with this? A. Yes.

Q. And did he pay that bill? A. Yes.

155 Q. Now, in connection with the expert witnesses that were brought down, do you recall their names? A. Yes.

Q. What were their names? A. Mr. L. Cordes was one and Mr. Porter was the other.

Q. Did they submit a bill? A. \$300 a piece.

Q. Was it paid? A. Yes. I paid one and Mr. Edell reimbursed me, and he paid one directly.

Q. Isn't it a fact that Mr. Edell has paid, either directly to the parties involved or reimbursed you, expenses in the tax litigation in the approximate sum of \$2,000? A. I don't think it amounts to that much, I know he didn't pay all the expenses I billed.

Q. How much does it amount to that he paid? A. Well, I can only estimate now. I don't think it -- I know he paid for the transcript because I asked him to, I know he paid for the two witnesses which was \$600, the transcript was maybe \$300 and he paid for my hotel expenses in Washington when I was on trial, and that is all I can recall that he paid.

Q. You wouldn't deny that it was as much as \$2,000?

A. I wouldn't deny it? No, I wouldn't deny it, I just don't know that it was that much, but the records will certainly show, the records are around.

156 Q. These disbursements that are the subject matter of this particular litigation, which are mentioned in your complaint, in the pretrial order and in the pretrial statement, I am talking now about those disbursements and which are set forth in a statement dated October 7, 1957, now, let's confine ourselves in this discussion to those disbursements. Let me show you this copy of that and I will ask you this: There are no transcript charges involved in that, are there?

A. Because they were paid, this was a bill, this is a later bill, there was a previous bill in which the transcript charges were and it was paid.

Q. The answer to my question is no, then, there are no transcript charges? A. Not in this bill, no.

Q. There were no transcript charges in that bill? A. Not in this bill, no.

Q. And there are no charges for witness fees in that bill?
A. They had already been paid.

Q. The answer is no? A. No.

* * * * *

157 Q. Now, Mr. Casey, you made reference to a civil fraud penalty. Now, my question calls for a date, my question will call for a date and I would appreciate it if you will give me the date. When, in what month and what year, was it first brought to your attention that the Internal Revenue Service was going to assert a civil fraud penalty against Mr. Edell? First, tell me the month, then follow it by giving me the year, if you will. A. August, 1954.

Q. And that was after Mr. Edell had executed an agreement employing you, is that correct? A. Yes.

Q. And my next question is, who, and would you give me the name of the person, who brought that to your attention? A. Mr. Weiss of the
158 Internal Revenue Service.

Q. And then from August of 1954 until this matter, the income tax matter, was settled -- when was it settled? A. It was settled in --

Q. 1958? A. About February, January or February of 1958.

Q. How many times was the civil fraud penalty, just give me a number, if you will, as you best recall, how many times was the civil fraud penalty mentioned by any Government officials in the interim?

THE COURT: You mean to him?

MR. BERLOW: To him.

THE WITNESS: To me, during that entire period, it was mentioned directly, by a Government official, twice -- three times.

BY MR. BERLOW:

Q. And during that period of time -- and that was orally mentioned? A. Oh, yes.

Q. During that period of time, how many written communications were received from the Internal Revenue Bureau? A. I can't recall that any were.

Q. There was, however, originally -- well, on October 8, you received a letter from the United States Treasury Department, Bureau of Internal Revenue, Bureau of Practice, there was no mention, of
159 course, in that document of a civil fraud penalty, that wouldn't be appropriate, would it? A. No, this is informal.

Q. In the original assessment deficiency letter, there was an original deficiency letter prepared by the United States Government that was sent to Mr. Amann or Mr. Pittman or one of his accountants, but later came to your attention, was there not? A. There was a protest and there was the Revenue Agent's report, yes.

Q. How many pages was the Revenue Agent's report? A. I can't tell now, I don't have a copy.

Q. Would you describe it as voluminous? A. It was eight or nine pages.

Q. In any place in any of those eight or nine pages, was any mention made of a civil fraud penalty? A. I don't believe so.

Q. Now, thereafter, the deficiency was settled and another eight or nine page document was -- A. The deficiency was settled?

Q. The income tax matter was settled, the matter covering income taxes for 1942, 1943 and 1945 was settled and another multi-page document was received from Internal Revenue, do you recall that?

A. Yes.

Q. And did you read that? A. Yes.

160 Q. Do you have any recollection whether, in any of the pages of that document, there was any mention of a civil fraud penalty?

A. There was none.

Q. Now, you say that the civil fraud penalty was mentioned first in August of 1954, but no mention was made in that, of course, of the civil fraud penalty, in the written agreements you entered into with Mr. Edell, was there? A. I didn't know that it was asserted at that time, no mention was made.

Q. When they were asserted, as I understand your testimony, that placed a greater burden on you so far as your work was concerned, did it no? A. Oh, yes.

Q. But you did not see fit to amend the agreements that you made with Mr. Edell in that connection? A. No, because it hadn't been asserted in the form of a deficiency. It was recommended by the agent to the conferee and the conferee told me he had the recommendation from the agent.

Q. Did he show you a document? A. No, it is a confidential report that goes from the agent to the conferee and the procedure to the Internal Revenue Service.

Q. You never saw that? A. Nobody sees it, no taxpayer sees it.

161 Q. Have you ever seen a writing -- A. No.

Q. I haven't finished my question. You have handled cases in which civil fraud penalties have been asserted, have you not? A. Yes.

Q. And are these civil fraud penalties, upon some occasions, maybe rarely but upon some occasions, asserted in writing? A. In the final deficiency, yes, in the final assertion of a deficiency, which we never reached.

Q. You have seen many of those assertions of -- A. No, I haven't seen many of them, I have seen them. I have had very little experience with fraud.

Q. But you have seen them? A. I have seen assertions of fraud in others.

Q. And you know it is the practice of Government officials handling these matters, that when they assert a matter as consequential as civil fraud, they assert it in writing, do they not? A. I have only seen it asserted in ninety-day letters.

Q. That is a writing, is it not? A. That is a writing which was never issued in this case.

Q. So the answer to my question is, when Government officials are going to assert something as serious as a civil fraud penalty
162 against a citizen taxpayer, they do it in writing, don't they, so the taxpayer will be advised of the charge against him and be in a position to prepare for it? A. You would have to tell me the time as of which you want me to answer that question.

Q. No, I won't tell you that, I just want to ask you this question. No Government official ever, to your knowledge -- let me reword the question. You have never seen any written statement signed by any Government official asserting a civil fraud penalty against Mr. Edell at any time, have you? A. I have not.

Q. And your agreement with Mr. Edell does not include any mention of a civil fraud penalty, does it? A. No, it does not.

Q. But you are asserting in this court at this time that you are entitled to compensation for representation as a lawyer for work done on behalf of Mr. Edell in connection with a civil fraud matter, are you not? A. No, I am not.

Q. You are making no charge for any of the matters in connection with the civil fraud assertion, are you? A. Well, that is a difficult question to answer.

Q. You cannot answer that question? If you can't answer it --
A. I want to answer it accurately. I want to answer it accurately.

* * * * *

163 THE COURT: Well, the witness has already testified, as I understood it, that all he was told was that the agent had recommended something or had made some report on the subject to the conferee and that the matter was settled. I mean the tax liability was settled, so I don't know why we are spending a lot of time in going into this.

MR. BERLOW: Well, I think it is clear that there were no services rendered for any fraud matter involved. If I understand Your Honor correctly, then I agree, there is no sense in pursuing it any further.

BY MR. BERLOW:

Q. Now, Mr. Casey, there did come a time when Mr. Edell first spoke to you in December of 1953, and after that time, it was brought to your attention that a settlement offer had been made by the United

164 States Government, is that so? A. Yes.

Q. And you had an opportunity to read and examine that settlement offer, did you not? A. Yes.

Q. And after you had read and examined that settlement offer, you drafted in your office a written contract to provide for compensation for you in connection with the tax case of Mr. Edell's, did you not?
A. Yes.

Q. And the contract was based, was it not, upon the settlement offer that had been made? A. Yes.

Q. And thereafter the first contract which was drawn and executed, was destroyed, was it not? A. I don't recall that it was. I testified yesterday to that.

Q. Yesterday I tried to refresh your recollection by reading from page 9 of the deposition and let's see if this very brief portion refreshes your recollection. I asked you, page 5 of the deposition, I asked you:

"Q. Was there an agreement dated July 15 that you entered into?"

And your answer was:

165

"Well, I can't recall the date, but the facts are that Mr. Edell pressed me to take this case, his case, and I was aware he had difficulty with his other lawyers and he came to my home on Saturday and talked to me at great length and I agreed to go into it on the basis of a \$2,500 retainer."

Mr. Dickey said:

"Would you speak a little louder, please?"

And you said:

"A \$2,500 retainer plus 30% of what I could save for him and we did have an agreement along those lines which embodied the tax problem and the renegotiation problem. And then it occurred to me that I had to file the contingency agreement with the Internal Revenue Service under the rules and they wanted to see a substantial retainer. So as not to confuse them, I recommended to Mr. Edell that I was taking it on a quoted basis on his figures, that we break it into two agreements, one, a straight 30% on the renegotiation and the other, \$2,500 plus 30% of the saving on the tax. There was no requirement to file the renegotiation. I wanted to accept the retainer on the tax problem, that is how there was a change and we did change the agreement. There was a predecessor agreement which superseded that. I don't have copies of it."

Does that refresh your recollection, Mr. Casey, that there was a predecessor agreement? A. No, it doesn't. I testified yesterday --

166 Q. I would like to finish my question. Does that refresh your recollection that you did change the agreement and there was in fact a predecessor agreement which superseded the first agreement?

A. It refreshes my recollection that there was an agreement, it was broken into two agreements. It does not refresh my recollection and I don't know now that there was a preceding written agreement. There may have been and there may not have been, I don't recall that there was.

Q. This chart which I am going to refer to has been marked as Plaintiff's 18 for identification and, Mr. Casey, you have had an opportunity to read that chart and study it? A. Yes.

Q. And you understand it? A. Yes.

Q. Now, this chart represents the calculations made in determining the fee claimed on the income tax matter, is that correct? A. Yes.

Q. And the amount claimed by the Government, that expression which appears on the chart, you would say, I think it has already been agreed that that language, if it is to be related to the agreement which you entered into with Mr. Edell, that that language more accurately should be "proposed deficiency," should it not? A. Yes.

167 Q. It should say proposed deficiencies after deduction of renegotiation income that was repaid by Mr. Edell, is that correct?

A. No, I would say after elimination of the income, rather than deduction of the income.

Q. Elimination, but in the process of eliminating it, you would subtract it, would you not? A. Subtract it from his gross income.

Q. And then you would take his tax rate, whatever bracket he was in, is that right? A. Yes.

Q. And by arithmetical computation, you would arrive at this as being the tax payable, that the Government is claiming as to tax payable, is that correct? A. Yes.

Q. Now, going to the "Amount Determined," the language used in the contract which we should relate to that so that we have the contract in mind, would be -- this would be called "Final Settlement," would it not? A. Yes.

Q. Now, the difference which you calculated at \$26,712, in this year, 1943, the difference is the result, is it not, of subtracting from the income, upon which the proposed deficiencies were based,
168 approximately \$14,000 expenses? A. That accounts for the difference between \$16,406 and \$14,040, yes.

Q. And that is in reference to 1943? A. That is right.

Q. And in 1944, the difference between the proposed deficiency, to use the contractual language, and the settlement is again arrived at by subtracting \$14,000? A. That is correct.

Q. And the same thing is true insofar as 1945 is concerned?
A. Yes, that is correct.

Q. And there is nothing else that accounts for the difference at all? A. That is right.

Q. Now, at the time Mr. Edell came to you and showed you the Amann proposal, the Government proposal that Mr. Amann had had, at the time he showed you that, again the Government had proposed in 1943 approximately \$14,000. You recall that? A. You mean the Government had proposed -- no, I don't know what you are talking about.

Q. In the proposed settlement of the renegotiation matter, the Government had, for each year, in the same manner as you had set this up, the Government had for each year inserted an amount which it was willing to allow for expenses. Of course, this -- A. No, it wasn't a
169 matter of willing to allow for expenses. They proposed a dollar settlement of \$183,000. In arriving at that settlement, they made certain assumptions of expenses and value of services, and other items.

Q. Well, I am only asking you about the expenses. A. Yes, the assumptions.

Q. I am only calling your attention to -- A. The assumptions, yes.

Q. The assumptions -- I understand that you have already testified that these assumptions were based upon no records, that these were just assumptions, I understand. A. I didn't testify that.

Q. Excuse me then, let's call it assumptions. A. All right.

Q. These assumptions as to expenses, let's just call it that, right? A. Yes.

Q. And the total expenses that was ultimately arrived at was \$42,000, isn't that right? For the three years, fourteen times three, \$42,000? A. In the Tax Court decision?

Q. Yes. A. Yes.

Q. And in the original proposal of the Government that you had before you, when you entered into this agreement with Mr. Edell,
170 the total expenses proposed were \$60,000, isn't that correct?

A. About that, that was the total assumed, yes.

Q. Now, if you inserted those expenses in this column that you have designated, "Amount Claimed by Government," then this figure would be substantially less than \$124,000, would it not? A. If the Government had accepted those figures, yes. If the tax people had accepted those figures and those figures were placed in the calculation, I would say the difference would be something like \$9,000 in reduced tax liability.

Q. If you inserted \$60,000 in this column which is what you call "Amount Claimed by Government," and what I call "Proposed Deficiencies," isn't it a fact that you would get a figure that is even less than the \$97,000? A. If the Government had allowed a deduction of \$60,000 instead of a deduction of \$42,000, you would have had a reduced tax liability, yes.

Q. And there would have been no saving to Mr. Edell, you would have effected no saving? A. Oh, I would have had a larger saving.

Q. No, no. If the 60 was inserted in this column -- A. But the 60 wouldn't be inserted in that column, it would be deducted from the second column. The 42 is deducted from the second column.

171 Q. You have deducted no expenses from this column. A. The Government claimed that the Government didn't allow expenses in the claim they made, these are additional expenses over what they did allow. The 42 is in the second column, not the first column.

Q. When you first read Mr. Amann's proposal as to settlement of the renegotiation matter, there was an allowance of \$60,000 for expenses, was there not? A. In the proposed settlement of the renegotiation matter, there was an assumption that \$60,000 would be allowed for settlement purposes, yes.

Q. And when you first entered into your agreement with Mr. Edell, there was only one agreement, wasn't there? A. In discussion, we talked about a single basis on which I would take it, yes.

Q. And the basis was the proposed settlement of the renegotiation matter, was it not? A. Oh, no. The basis was the settlement of the tax matter and the settlement of the renegotiation matter.

Q. There was no proposed settlement on the tax matter, they asserted that all this income was taxable and made no allowance for expenses, did they? A. I think they allowed some deductions.

172 Q. But when it came to the final determination of the tax matter, the only expenses that were in fact allowed were the same expenses that you had stipulated in the renegotiation matter, to the penny? A. The only additional expenses that were in fact allowed were those that the Tax Court had determined and that were embodied in the Tax Court decision by stipulation, as a result of our stipulation, that is.

Q. Is it your testimony that in calculating this tax, there were expenses allowed in excess of \$14,000? A. I think there were, yes.

Q. Would you tell me what they are? A. I don't know what they were, there were credits, there were the personal exemptions, and I believe there were some ordinary expenses not relating to Mr. Edell's business that were allowed, but they didn't amount to much.

Q. Let's refer again to this deposition and see if the reading of this doesn't refresh your recollection: that the only saving that was accomplished -- A. I just testified that, the only saving that was accomplished was the \$42,000, that is right.

Q. By taking the expenses that were set forth in the stipulation and deducting them from the deficiency asserted? A. That is right.

Q. And if you started off with the expenses that were allowed by Mr. Prentice in his settlement proposal to Mr. Amann, if you started from that figure, you didn't do as well as Mr. Amann's original
173 proposal, did you? A. How can I have started from that figure? I couldn't have started from that figure.

Q. You had the figure before you, did you not? A. The figure wasn't before the tax people.

Q. But it was before you, was it not? A. Oh, yes.

Q. And it was before Mr. Edell, was it not? A. Oh, yes.

Q. And those figures, those expense figures were the basis of the understanding that was incorporated in the original agreement that we don't know whether was destroyed or not? A. It was never incorporated in the original agreement.

Q. You don't have that agreement? A. It was never a part of any agreement. These expenses were never a part of any agreement. The only thing that was a part of the agreement was the net result of \$183,000 and the tax deficiency which the Government asserted in two separate proceedings.

Q. Let me ask you this, at the time, Mr. Casey, that you undertook to represent Mr. Edell, there was a petition filed in the Tax Court of the United States, was there not, by Mr. Amann? A. No, by Pittman & Roberts.

Q. And that is a court of record of the United States, is it not?
174 A. Yes.

Q. The Tax Court? A. Yes.

* * * * *

Q. Let me ask you this question, very simply: Isn't it a fact, Mr. Casey, that at the time you entered into the original agreement with Mr. Edell, you were well aware that any stipulation entered into in the Tax Court of the United States as to expenses, would be legally binding upon Mr. Edell insofar as his income tax deficiencies were concerned, because that stipulation would be between the same parties and would be made in a court of record and, consequently, would be res judicata. Did you know that or not? A. I advised Mr. Edell that was one of the reasons for taking the stipulation. I couldn't prove as well as a stipulation in court, either in the tax proceedings or the renegotiation proceedings, the main issue in the tax proceedings was the family partnership.

175 Q. Isn't it a fact, Mr. Brady, that the original agreement that you entered into, let's put it this way -- Mr. Casey, there did come a time, did there not, when you did receive a communication from the United States Treasury Department on October 13, 1954, advising you of certain requirements insofar as contingent fees were concerned? A. Yes.

Q. Now, at the time you received that, you had a contingency arrangement with Mr. Edell, did you not? A. Yes.

Q. And that contingency arrangement was in accordance with the practice of the Tax Court, was it not? A. Yes.

Q. Had you filed it with them? A. I filed it with the Committee on Practices. You are not required to file it with the Tax Court.

Q. You filed it with the Office of the Director of Practice? A. Yes.

Q. And when did you do that? A. Shortly after it had been executed, I would say sometime in -- I don't know, August, September.

Q. But this letter of October 13, which your counsel has offered into evidence and it has been marked as Plaintiff's Exhibit 10, states that "this office is in receipt of your letter of October 8, 1954, and the attached copy of the retainer fee agreement for your representation
176 before the Treasury Department of Harry Edell." Does that refresh your recollection? A. I guess that is when I filed it.

Q. October 8? A. I guess that is when I filed it, yes.

Q. But it was dated July 28? A. Yes.

Q. Isn't it a fact that you entered into an agreement with Mr. Edell covering both the renegotiation matter and the income tax matter, which agreement provided that you must improve upon the expenses which Mr. Amann had received from the Government, and that you changed that agreement on October 13 -- on October 8th and advised Mr. Edell it was only a technical change and it would not change the understanding that you had with him? A. No, that is not a fact.

Q. Did you have a conversation with Mr. Edell as to the practice, as to the rules of the Office of the Director of Practice? A. Yes, I told Mr. Edell that is why I was going to embody our agreement in two agreements, one dealing with renegotiation and one dealing with the tax deficiencies.

Q. And didn't you tell him at that time, also, that even though you were going to change the agreement because it was not in accordance with the rules, that nevertheless the \$60,000 expenses which Mr. Prentice and Mr. Amann had included in their proposal, that that
177 \$60,000 would be the starting point? A. Certainly I did not, there was never any mention of expenses being in the starting point. The starting point was the claims, the assertions the Government was making against Mr. Edell.

Q. The settlement proposal was the starting point, was it not? A. No -- yes, the settlement proposal, the net result, the \$183,000 renegotiation, the claims.

Q. When Mr. Edell came to you, he had been represented by Douglas Amann, whom you understood and we all understand to have been a very competent lawyer? A. Oh, yes.

THE COURT: Had he gotten any proposition from the Treasury Department of settlement?

THE WITNESS: No. The Treasury Department felt that the tax deficiencies could not be settled until the renegotiation claim had been finally determined.

MR. BERLOW: Is Your Honor finished?

THE COURT: Yes, I have finished.

BY MR. BERLOW:

Q. The only settlement offer that you had was the renegotiation settlement offer? A. Yes.

178 Q. And that, I think you testified three or four times, that was the basis of your discussion with Mr. Edell? A. Yes.

Q. And it was based upon that, that the original agreement was entered into? A. Yes.

THE COURT: Well, that proposition was this \$183,000, was it not?

THE WITNESS: Yes.

THE COURT: And this \$183,000 was supposed to be the amount after the deduction of what the Government proposed to deduct? I mean, the deductions had been made before this \$183,000 was determined?

THE WITNESS: In arriving at the \$183,000 for purposes of settlement, the Government made a calculation which was submitted, which allowed certain deductions and allowed certain value to Mr. Edell's services and the balance was \$183,000.

* * * * *

BY MR. BERLOW:

179 Q. In reference to -- there was this original proposal that Her Honor inquired about, which had reference to excess profits of \$183,000, is that correct? A. That was the basis on which it was settled.

THE COURT: I don't think I designated anything as an original proposal, I simply asked about --

MR. BERLOW: The figure of \$183,000.

THE COURT: Yes.

BY MR. BERLOW:

Q. Was that in the settlement proposed by Mr. Prentice on December 16, 1953? A. Yes.

Q. Now, then, that was the conclusion that was reached after some other calculations were made, isn't that correct? A. Yes.

Q. And I show you this document which was marked at the time of the deposition as Defendant's Exhibit No. 3 and ask you whether or not, included in the calculations used in arriving at the \$183,000 figure, were there or were there not certain figures used as to expenses? A. Yes, there were.

Q. Now, those expenses that were referred to in that settlement proposal were in addition to certain expenses which it was admitted were non-renegotiable. In other words, let me phrase it another way, there were certain expenses which no one ever contested at any time, for example, I show you this item here, this \$600 and on top of it, it
180 says non-renegotiable expenses, they were conceded as being expenses at all times, were they not? A. Well, for the purpose of this allocation, they were, yes.

Q. Then, in 1943, there were these renegotiable expenses of \$14,400? A. Yes.

Q. In 1944, there were renegotiable expenses of \$18,300?
A. Yes.

Q. In addition to \$1,700 of expenses which everybody conceded were non-renegotiable, right? A. I don't know if anybody conceded it.

* * * * *

Q. There is \$18,300 in Mr. Prentice's settlement proposal for 1944, is that right? A. Yes.

Q. And for 1945, the expenses were \$20,700? A. Yes.

Q. And there were legal expenses of \$6,667 and \$4,500?

A. Yes.

181 Q. Now, those were the expenses that were in the settlement proposal that you had before you, before you commenced your discussions with Mr. Edell as to your fee? A. Yes, they were the expenses on which the settlement proposal was based.

Q. Now, there is no question that those expenses were contained in the settlement proposal as to the renegotiation matter? A. They were the basis for the proposal, yes.

Q. The basis for your fee agreement? A. They were the basis for the proposed settlement of the renegotiation matter on which my renegotiation retainer was based.

Q. But the first retainer was not a renegotiation retainer, it was a retainer for all the tax matters, was it not? A. Our first general understanding was that it covered both the tax matters and the renegotiation matter, as did the two agreements.

Q. But then there came a time when the first proposal was divided into two separate proposals? A. Yes.

Q. And the separate proposal, which is attached to the complaint, which has reference to the proposed deficiencies, it clearly now makes no reference to the deduction of the expenses as proposed by Mr. Prentice in the renegotiation matter? A. Neither retainer made any reference to the deduction of expenses.

182 Q. Your testimony is that when Mr. Edell showed you this, when you and he discussed this proposed settlement agreement, that Mr. Prentice had proposed, that at the very beginning that settlement proposal was segregated so as to be applicable only to your renegotiation retainer, is that right? A. Because the renegotiation arrangement was based upon the settlement, which was \$183,000 in net amount.

Q. The answer to my question is yes. A. Yes, that is right.

Q. And even though there was one agreement and only one agreement, that one agreement that you entered into with Mr. Edell had some separate reference to expenses on the income tax matter? A. No, that one agreement had no reference to expenses. The one agreement was made up of two parts and each was based on the net result.

Q. The only expenses that were before you at that time were the expenses that we have just gone over and which totaled somewhat in excess of \$60,000, those are the only expenses that were discussed, were they not? A. No expenses were discussed. The only thing that was discussed was the net deficiency, the net claim of the Government.

183 Q. What was discussed was the settlement proposal that Mr. Amann had received, isn't that right? A. The figure of \$183,000 was discussed.

Q. And you were to improve upon that settlement? A. My compensation was to be based on my ability to improve on that offer.

Q. And the offer, in turn, was based upon the Prentice proposal? A. Well, the offer was the Prentice proposal.

* * * * *

184 Q. Now, you did enter into, in the course of the tax case, a stipulation agreeing to \$14,000 a year or \$42,000 expenses and not sixty? A. I agreed to \$42,000 and not zero. The Government wanted zero.

Q. Not zero which the Government proposed at that time, but Prentice had proposed sixty sometime previously? A. Mr. Edell directed me to reject that proposal and it was withdrawn, and the only way was to allow such expenses as could be proven in court.

Q. So you accepted the \$14,000 -- A. I thought \$14,000 was better than I could prove in court on either the tax matter or the renegotiation matter.

Q. Right. And you had a discussion with Mr. Edell as to that, did you not? A. Oh, yes.

Q. And did you tell him that those expenses would be binding upon him in the Internal Revenue matter? A. No, I didn't tell him they would be binding on him, I told him they would be useful in that in settling the Internal Revenue matter, we would be able to show that the Tax Court had made this finding and that it would help us determine and persuade the Internal Revenue authorities to accept a greater amount of expenses than they were disposed to accept and greater than I thought we could prove in court.

Q. But as a matter of fact, when the matter went over to Internal Revenue, the \$14,000 a year was binding on Mr. Edell? A. It wasn't
185 binding, no, we tried very hard to get them to accept more and they didn't want to accept that much. We finally settled at the same figure, it wasn't binding. They wanted to allow less and we wanted them to allow more.

Q. It wasn't binding except did any -- in your conclusion that it wasn't binding, is that based upon what one of the Revenue agents said? A. It was based on the position they took and --

Q. Wasn't the position that they took, that the stipulation filed in a court of record was res judicata on that issue? A. No, no.

MR. MILLER: I object, that wouldn't be the law, Your Honor.

THE WITNESS: No.

THE COURT: What stipulation are you asking about?

MR. BERLOW: I am asking about the \$14,000 stipulation, that was precisely the expenses that were agreed upon, to the penny, in the Internal Revenue matter. And my point is that the acceptance of the Prentice proposal, after the petition was filed in Tax Court, which is a court of record, that if that \$60,000 of expenses had been accepted,

that that would have been binding on the Internal Revenue Service and in fact, as the case ultimately turned out, what was stipulated in the Tax Court was in fact binding because that is what ultimately was agreed upon. That is my position, Your Honor.

186 THE COURT: Go on with your next question.

BY MR. BERLOW:

Q. Isn't it a fact, just to summarize very briefly, isn't it a fact, Mr. Casey, that the entire savings effected by you resulted from the stipulation that his expenses for the years in question were \$14,000 a year? A. Not entirely.

Q. Now, let me read to you from page 65 of the deposition and I ask you that same question:

'Isn't it a fact that the entire savings effected by you resulted from the stipulation his expenses for the year in question were \$14,000?'

And didn't you answer:

"That is right, it resulted entirely from the fact we were able to get more expenses allowed by the Internal Revenue people than they were able to allow in the original deficiency. The other issue is whether they would recognize it before the partnership between Mr. Edell and his brother."

And then I said:

"The original expenses, the Internal Revenue made no allowances for the expenses?"

"That is right."

You recall those questions and those answers? A. Yes, I think I could answer them more fully now.

187 Q. The answer that you gave at that time was not a full and complete answer, is that right? A. I don't think it was as precise and as refined as a wholly accurate answer ought to be.

Q. Now, what has occurred between June 23 of 1960 and today that would put you in a position where you could now more precisely answer the question than you did at that time? A. Nothing has occurred except I have had more time to look at the records and refresh my recollection on what happened in the case.

Q. Well, at the time your deposition was taken, you were a lot closer to this matter than you are now? A. Well, I hadn't looked at anything in the matter for several years.

Q. You went to the deposition without any preparation at all?
A. That is about right.

Q. And you have thoroughly prepared for the trial today?
A. I read through my correspondence file and looked through everything.

Q. So that as a result of the study of the correspondence file, you are in a better position to answer these questions now? A. Well, I sometimes have second thoughts, too.

Q. And when you sometimes have second thoughts, is your recollection better many months after, sometimes, than it was many
188 months closer? A. I am not talking about my recollection, I am talking about the precise statement, the delineation of my recollection.

* * * * *

Q. Mr. Casey, in your agreement, you refer as far as the tax matter is concerned to the proposed deficiencies. Now, isn't it a fact that the proposed deficiencies were approximately \$175,000?
A. At that time, yes.

Q. Now, then, did there come a time when Mr. Edell made a payment or, let's use this language, repaid an amount to the United States Government as a result of renegotiation? A. Yes.

Q. And do you recall what that amount was? A. Well, he was required to repay \$150,000 as a result of the judgment in the
189 Tax Court decisions, and by computation, he was allowed to pay \$40,000 of that in the form of a tax credit, it was probably more, it was probably \$50,000 in the form of a tax credit and \$110,000 in cash.

Q. He paid, the smallest amount that we could talk about would be \$110,000 in cash? A. That was the cash, we had to include interest.

Q. Now, your agreement says -- does it say this or does it not say this:

"It is understood and agreed that in the determination of your fee, the deficiency proposed, namely \$175,000, by the United States Government, will be reduced by any amount repaid by me to the United States Government as a result of renegotiation."

Does it say that? A. Will you read the rest of that sentence?

Q. I will get to that in a minute. A. I would like to answer the whole sentence.

Q. I would like you to answer my question, if you don't mind. Does the agreement say what I have just read to you? A. That is the first half of the sentence, yes.

Q. It does say that? A. Yes, that is the first half of the sentence, correct.

Q. And the amount repaid by Mr. Edell was not less than \$110,000?

* * * * *

190 Q. So, you subtract \$110,000 from the \$175,000 and you get \$65,000.

THE COURT: Are you asking him?

MR. BERLOW: Yes.

BY MR. BERLOW:

Q. Isn't that correct, Mr. Casey? A. I agree with the arithmetic.

191 Q. And that \$65,000 is less than the amount ultimately determined, or \$97,000, is that not right? A. That is an accurate statement of the arithmetic.

Q. And consequently, if you followed that, then there would be no savings effected whatsoever? A. That is a hypothetical question?

Q. And you would not be entitled to the \$8,013.80 that you claim in this case? A. Is that a question to me?

Q. Yes. The question is, if you subtract from the proposed deficiencies, as the contract says you should, the amount repaid on renegotiation, as the contract says you should, you get a figure of \$65,000, which is less than the amount ultimately determined? A. Isn't that a statement rather than a question, "as the contract says you should"? The contract doesn't say you should.

THE COURT: Well, you tell us what your view of the contract is, then.

THE WITNESS: The contract clearly says that the -- it says that the tax deficiencies will be reduced by the amount paid back in renegotiation and the reduction should be accomplished by eliminating that amount from income, so that I will be entitled to 30% of the amount by which the tax is reduced by eliminating the excessive profits from income.

MR. BERLOW: Is Your Honor finished?

192 THE COURT: You are claiming, Mr. Berlow, that the defendant paid \$110,000 in cash and \$50,000 in some other way?

MR. BERLOW: I will say that the language means what he paid in cash. I think that is the simplest approach, he paid \$110,000 in cash and under the language of the contract, that must be deducted from the proposed

deficiency before -- and then you take the resulting figure and if that figure is greater than the amount determined as set forth in the chart, then Mr. Casey is entitled to 30% of that. But as it turns out, after making that deduction, it is less, so that under that theory there is no payment due. That is probably, Your Honor, a matter of construing the contract and I think, Your Honor, we can argue that at some later time. But the matter I do want to make clear from this witness is that the language of this --

BY MR. BERLOW:

Q. You just expounded a theory as to what the contract means. Is the contract clear in expressing your theory? Would you answer yes or no? A. Yes, I think it is clear. I think that is the way you have to interpret it, and my subsequent letters to Mr. Edell defined it that way, explained it that way.

THE COURT: Now, just a minute. This figure was \$183,000?

THE WITNESS: Yes.

THE COURT: All right, what, to your mind, should be deducted under this clause:

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It is understood and agreed that in the determination of your fee that the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation, and that you will not receive 30% of the tax reduction resulting from any such renegotiation refund.

What comes off, under that clause, from the \$183,000?

THE WITNESS: The renegotiation refund is deducted from Mr. Edell's gross income, because that is given back to the government, so that it is no longer income to him. And it is taken off the income so that I don't get 30% of the tax reduction that results from the elimination of that money from his income.

THE COURT: Well, that doesn't answer my question.

MR. MILLER: Your Honor, on that particular point, isn't the question, not the \$183,000 which was rejected, but the eventual outcome

of \$150,000 from the Tax Court?

THE COURT: Well, the question that I asked him was: What sums, if any, does he claim are to be reduced? This clause says something about a reduction. Now, what, under your theory and under the circumstances of this case, is the reduction?

THE WITNESS: \$51,000, which is the tax saving from the elimination of \$150,000 from Mr. Edell's income. \$51,000.

THE COURT: Are you saying, then, that \$51,000 is the amount you would deduct from the \$183,000?

194 THE WITNESS: No, not from \$183,000, from the tax deficiency which was \$175,000.

THE COURT: Very well.

BY MR. BERLOW:

Q. Well, it is your testimony now, I understand, that this contract is clear on that?

THE COURT: Well, that is a matter of opinion, Mr. Berlow.

MR. BERLOW: Well, his opinion has changed since the deposition.

BY MR. BERLOW:

Q. You remember that I read you that language? A. Yes, I said it wasn't as clear as it might be.

Q. So this language I read you is not clear on that point at all, is it? And you said: It is not clear, it doesn't seem to be clear.

Do you remember? A. Yes, yes.

Q. Now, who drafted this contract? A. I did.

Q. And to your knowledge, did Mr. Edell have any attorney representing him at that time in connection with the drafting of this contract? A. Not to my knowledge.

Q. And after the contract was executed, for the first time, from time to time, did Mr. Edell call upon you for explanations of its terms?

195 A. No, no.

Q. Did you send him a two-page letter explaining something about this contract? A. I sent him a two-page letter explaining how the original typing mistake had been made and how the \$183,000 was the

proper figure, instead of \$138,000, and in that letter I spelled out how the contract would operate.

Q. And you thought that would be helpful to Mr. Edell? A. Yes.

Q. And after he received that letter, did he hire any other attorney to represent him in connection with this contract matter? A. No, not to my knowledge.

* * * * *

BY MR. BERLOW:

Q. Now, Mr. Casey, there came a time, did there not, when these agreements were supplemented or additional agreements were entered into? A. Yes.

196

Q. And do you recall what those supplements had reference to? A. Well, one supplement, it was a matter of \$7,500 attorney's fee that Mr. Edell had paid in 1946 and he spoke to me about that, and I said, well, I wouldn't want 30% of that for eliminating it, and he asked me to put that in writing, which I did. Then after the Tax Court decision on the renegotiation matter, for a time we tried to get as large a tax credit as we could and for a time we thought that we would be able to avoid the payment of interest or we had a legal theory on which we might work out part of the interest at 4% and part of it at 6%, and it was a substantial amount of money involved and a substantial amount of time we put in, trying to work out the theory, and I told Mr. Edell about it and I said, I think that if we can save this interest, we probably ought to get 30% of the interest saving, too, and he agreed and we had a little supplementary letter in which he agreed that if we saved any interest, we would get 30% of that.

Q. With reference to the first matter, both of these supplements were reduced to writing? A. Yes.

Q. And we have one of them -- both of them, do you recall, were produced at the deposition that was taken by you? A. Yes.

197 Q. And the first one that had to do with the interest, that was signed by Mr. Edell, was it not? A. I believe so.

Q. And so was the second? A. I believe so.

Q. The one that you mentioned, the \$7,500, didn't that have to do with a refund, a tax refund, and not an attorney's fee, do you recall that? A. I really forget what was involved there. I think it was the money coming back from 1946 or 1945, I don't know exactly what was involved there. We waived any claim to it, anyway.

Q. And in that supplement, wasn't there some language in which Mr. Edell stated that you were not to make any settlement of the matter without his authority? A. Yes, we agreed I wouldn't settle the matter without his authority and made it explicit in that agreement.

Q. And did that vary any of the understandings that you had with Mr. Edell? A. No, it just expressed them in writing, I think he wanted to have it done for some reason at that time.

Q. It was your understanding at all times, was it not, that you were not to enter into any settlements of any of these matters without his approval? A. I understood I would not make any final settlement without his approval.

198 Q. And when the time came, in reference to this stipulation of \$14,000, that stipulation was actually reduced to a typewritten stipulation which was filed in court, was it not? A. Yes, it was.

Q. It wasn't just an oral agreement in chambers? A. It was a typewritten stipulation, yes.

Q. And do you have any recollection as to who typed it, whether you typed it or the other counsel typed it? A. Well, no, I think it was typed probably in my office, it might have been typed down in Foley Square in the Courthouse, where Mr. Leathers was working, from time to time.

Q. How long after it was typed was it ultimately executed by counsel? A. Oh, I don't know, a couple days.

Q. And during that period of time, between the time it was typed and the time it was executed, did you see Mr. Edell at all? A. Yes, I did.

Q. And did you have conversations with him? A. Yes, I did.

Q. And did you exhibit to him this typewritten stipulation? A. I know I exhibited it to him, I know I told him about it and discussed it with him.

199 Q. And did he read it? A. Yes, he did.

Q. And did he sign it? A. I don't think he signed it, it was a stipulation between attorneys.

Q. Your recollection is he did not sign it? A. My recollection is he didn't sign it, it was a stipulation between attorneys.

Q. Did you request that he sign it? A. I don't believe I did.

MR. BERLOW: Do you have a copy of that stipulation, Mr. Miller?

MR. MILLER: No.

* * * * *

BY MR. BERLOW:

Q. Now, you discussed that with Mr. Edell in the office; did you discuss it again in a hotel room, do you recall that discussion? A. Oh, yes, I discussed it with him in the Biltmore Hotel.

Q. Did you advise him at that time that the \$14,000 that was agreed upon as the expenses, would be considered by the Internal Revenue Bureau as binding on him insofar as income tax was concerned? A. No, I didn't advise him it would be considered binding. I did advise him that I thought it would help us in getting the Internal Revenue Service to accept

200 expenses of \$14,000, which was more than I felt they wanted to accept and more than I felt I could prove.

Q. Did you at any time make reference, at any time after the stipulation was typewritten, did you make reference to the fact, to the original Prentice proposal where the expenses were stated as being \$60,000? A. That was no longer in existence. Mr. Edell had directed me to reject that.

Q. That document had not been destroyed, had it? A. But the offer had been withdrawn and we had rejected it, so it was not -- it had no reality and no meaning.

Q. But your agreement with Mr. Edell, which was based on that proposal, that agreement was not destroyed, was it? A. My agreement

with Mr. Edell was based on the final figure in that agreement, \$183,000.

Q. It was only based on a portion of that proposal? A. No, it was based on the final amount, \$183,000.

Q. And nothing else in the proposal had anything to do with your agreement at all. A. My agreement was based on my ability to improve the excess profits demanded of Mr. Edell by reducing it below the \$183,000 figure.

Q. Now, at one point the figures were transposed, as you say, and it was \$138,000? A. Yes.

201 Q. By coincidence, not only were they transposed but that figure of \$138,000 is the tax dollars that Mr. Edell would have had to pay under the Prentice proposal? A. That is not true.

Q. Well, the figure of the tax dollars was \$137,532, something in that nature, wasn't it? A. And sixty cents.

Q. And sixty cents, excuse me. So it is within the closest thousand to that figure of \$137,000? A. But it is not the figure referred to in the agreement which is the offer of the Justice Department.

Q. It is not the figure to the penny? A. It is not the figure which was the offer of the Justice Department which, as you said, Mr. Prentice had made, in the amount of \$183,000.

Q. If the \$137,500 is the figure that you arrive at as being the cash that Mr. Edell must pay, after you take Mr. Prentice's \$183,000 proposal and deduct from it the expenses, the tax paid, and several other items which we have gone over now in that Prentice agreement -- isn't that right? A. What was that, now? I didn't get the beginning of your question.

202 Q. We are talking about three figures, \$183,000, that is the figure that Mr. Prentice proposed and you referred to it as their offer, do you not? A. Yes.

Q. Now, in determining how much money Mr. Edell had to pay, if you accepted that offer, you had to make certain calculations, did you not? A. Yes.

Q. And one of the vital calculations you had to make was the expenses to be deducted, isn't that one of them? A. No, no.

THE COURT: I understood you to say, didn't I, that the expenses had already been deducted, in whatever the government proposed to allow, the expenses had been deducted before they fixed this figure of \$183,000?

THE WITNESS: Certainly, that is correct, yes.

BY MR. BERLOW:

Q. So, the \$183,000 was arrived at after deducting expenses?

A. Yes, that is right.

Q. But that figure is not what Mr. Edell was to pay at that time, was it? A. Yes, that was the figure Mr. Edell would have to pay, if we accepted the settlement. But he would pay partially in a tax credit and partially in cash.

Q. And after you took the cash credit, what was the cash he had to pay? A. Well, that is hard to say, that would have to be estimated

203 by the Accounting Office and the Treasury Department and the Justice Department, in fact, Mr. Amann, as of about two or three months earlier, had made a calculation which he said was tentative and it showed a figure of \$137,000 and some odd dollars, because Mr. Amann's calculation is a net cost after a tax credit.

MR. BERLOW: I think this may already be in evidence.

THE COURT: What is it?

MR. BERLOW: I have a photostat of something but I think -- it is Plaintiff's Exhibit No. 3.

BY MR. BERLOW:

Q. The calculation that Mr. Amann made is attached to a letter which is marked as Plaintiff's Exhibit No. 3? A. Yes, that is right.

Q. On the very last page, there is a notation there, total renegotiation costs, \$137,526.60. Now, would you explain to us what that means? A. That is Mr. Amann's estimate of the cash costs of accepting Mr. Prentice's offer of \$183,000 after reflecting tax credits and after estimating interest, interest payable, it says here, to March 21,

1952, and -- March 21, 1954.

204 Q. Does that include any reference to the payment of the income taxes due? A. No, this has no relation to the payment of the income taxes due.

Q. But that figure was the cash that Mr. Edell, under this settlement offer and Mr. Amann's calculations, would have to pay, less the tax credit, of course, to dispose of the renegotiation matter right there and then? A. That is the cash he would have to pay after getting credit for the taxes he had previously paid on the \$183,000 of income, which he would be charged with refunding as excessive profits under the Prentice offer.

Q. If Mr. Edell had agreed to pay that \$137,500, that would have disposed of the renegotiation matter, would it not? A. Well, it wouldn't work that way, he would have to agree to repay \$183,000, because that was the offer, and he would have gotten a tax credit of \$71,000, according to Mr. Amann's estimate, and then he would have had to pay interest on the difference. Actually, after the tax credit, Mr. Amann's estimates, the amount he would have to pay to settle the renegotiation liability would be \$111,895.97.

Q. Let me put it very simply, not being a tax lawyer, I put it in very crude terms, if he had come up, if he had presented a check for \$137,500 to the Internal Revenue Service, they would have dismissed this whole renegotiation matter and released all his money from escrow, wouldn't they? A. No, no, it would all depend on when he did it and what the interest was at that time, and so on.

205 Q. No, if he did it at that time, at the time when Mr. Amann made his calculations? A. At that time, Mr. Amann's calculations showed that if he settled -- accepted the settlement of \$183,000 and then he went and got interest computed and tax credit calculated, that he would be required to pay \$137,526.60.

Q. And that was what Mr. Edell showed you when he first talked to you? A. No, I didn't see this at that time.

Q. But you did know of this settlement proposal and the calculation? A. I never saw the tax calculation, I just knew of the settlement proposal of \$186,000.

Q. Did you make the calculation, yourself? A. No, no, this came up with Mr. Amann's papers.

Q. And you read them? A. Oh, yes.

Q. And didn't you meet with Mr. Amann and discuss this matter? A. I didn't discuss the tax credit, just discussed the case and the Justice Department's offer.

Q. Isn't it a fact, when Mr. Edell came to see you, that what he said to you was, "I have to pay \$138,000 to settle this matter. Can you improve on that figure?" A. No, I think he said the Justice Department had offered a settlement of \$183,000, and then he had his tax problems, and can you advise me how to handle the whole thing.

Q. Isn't it a fact that all Mr. Edell was interested in, was how many dollars he would have to pay? A. I can't answer that.

Q. Did he say that to you? A. No, I don't recall that he said it in just that way.

Q. He talked to you about the offer and the credits and the deductions, and all of that, he put his proposal to you in that language? A. He talked to me about not having to pay anything at all. He wanted to have it established that he was not subject to renegotiation. He never got into these figures.

Q. Now, Mr. Casey, you made reference to a portion of the transcript in the case before Judge Heron, in which there was reference to a bankruptcy that Mr. Edell was involved in. Do you recall the year in which that occurred? A. I think it was 1938.

Q. And that is an isolated portion of the testimony, isn't it? A. Well, it was pretty vital, it wasn't isolated -- every portion is isolated.

Q. Are you certain the year was 1938? A. I am quite certain.

Q. Could it have been 1932? A. I don't think so. Wait a minute,

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Q. Could it have been 1932? A. I don't think so. Wait a minute,

207

when I said 1938 --

Q. There were a lot of bankruptcy --

MR. MILLER: Just a minute. He hasn't finished his answer.

THE WITNESS: When I said 1938, I am talking about the tax return. Now, I don't know, the bankruptcy might have been earlier, I was under the impression it was the same year, it might have been earlier.

BY MR. BERLOW:

Q. There were an awful lot of bankruptcies in 1932, as you know, in addition to Mr. Edell? A. I guess that is not a question, is it?

Q. Were there, do you know that there were? A. I have heard there were.

Q. I think you said in your testimony, that this evidence was very damaging, so far as Mr. Edell's case was concerned, was it not?

A. I said that the discrepancy between the income he said he had earned and his tax return impaired his credibility and made it difficult to establish those things, and I had to rely on his testimony entirely.

Q. I will get to the tax return in a minute. I am talking about the piece of testimony, the one piece of testimony in this 400 page transcript that you referred to and that piece of testimony I am talking about is the bankruptcy. A. That is not the one piece of testimony I

208

am referring to --

Q. That is all I am referring to. A. O.K., you said the one piece I referred to.

THE COURT: You gentlemen shouldn't attempt to both talk at the same time.

MR. MILLER: The Court please, may I object on the ground the testimony is not being quoted accurately from the tax record. Page 411 shows petition in bankruptcy dated January 31, 1938, discharged June 17, 1940, and I submit the questions about 1932 are not proper.

MR. BERLOW: I stand corrected, Your Honor. The petition was filed --

THE COURT: Well, I don't think it is important.

MR. BERLOW: I don't think it is very important.

BY MR. BERLOW:

Q. All I am trying to say is, if somebody read this transcript, they would find that in the course of the trial, as a result of your efforts, you introduced a great deal of evidence in connection with Mr. Edell's ability and integrity, that made a favorable impression on Judge Heron, did you not? A. I introduced that in direct examination and Mr. Leathers introduced the testimony you just brought up, in cross-examination. I don't know what kind of an impression it made on Judge Heron.

209 Q. But the fact was that Judge Heron did find that a reasonable profit, which Mr. Edell was entitled to, was substantially in excess of that which even Mr. Prentice proposed, did she not? A. Yes, and she did not believe his testimony that he did not solicit contracts, which was the basic thing on which Mr. Edell was relying.

Q. Now, when you represented Mr. Edell in this case, you took the position, did you not, that he did not solicit, didn't you? A. I argued that, yes.

Q. And your argument in that regard was based upon a careful and thorough examination of the evidence that you had examined on that issue? A. Well, it was based on --

Q. Would you answer that yes or no? A. Yes, that is right.

Q. And when you made this argument to the court, you argued to the court, did you not, that the court should find on this evidence that he did not solicit? A. Certainly.

* * * * *

210

BY MR. BERLOW:

Q. Mr. Casey, your counsel has offered this letter from the United States Treasury Department, Bureau of Internal Revenue, which is marked Plaintiff's Exhibit 10. This letter comes from the Office of the Director of Practice. Was this the first communication that you received from them in reference to these agreements? A. As far as I know.

211 Q. So that it wasn't until October 13th that you were aware that these agreements in some way contravened their practice? A.

Oh, no, that is not true. I was aware, before I filed the agreements, that I would have to show a reasonable relationship between the retainer and the amount involved and the matter that was pending before the Internal Revenue Service, because I know that and my associate in the office pointed that out; I felt that in order to make that square with my understanding with Mr. Edell, we had to set up two agreements.

Q. So you did prepare these agreements, then, in accordance with the practice? A. Oh, yes, back in July, I prepared them in accordance with my version of what had to be done in accordance with the practice.

Q. So Mr. Lee, who was the Director of Practice, was mistaken in his letter of October 13, then, when he advised you that these agreements were not in accordance -- A. No, he raised a further point, I hadn't specified the amount involved in the litigation.

Q. And then it was necessary to change the agreement again? A. No, the agreement wasn't changed, I just had to answer the questions he raised, that's all, it was not necessary to change the agreement. He asked for more information, in that letter.

212 Q. And you provided him with that? A. I assume I did.

Q. And so that this letter, which has been offered by counsel, has no bearing insofar as changing these agreements is concerned?

A. No bearing at all, the agreements were not changed.

Q. Now, Mr. Casey, do I understand it to be your testimony that insofar as -- getting to the income tax matter, the fact is you never did any work on the 1946 or 1947 income tax returns? A. I never did any active work, I discussed it with the accountants continuously, with Oppenheim and Mr. Dixon of the Oppenheim office, kept them posted on what we were doing.

Q. Now, one of your reasons for that was that you never received the income tax returns for those years? A. I received the income tax

return for 1946, but not for 1947, and I didn't receive the books of account or any of the data backing up the income tax return for 1946.

* * * * *

214 BY MR. BERLOW:

Q. Did you receive any data at all in reference to the 1947 taxes? A. I don't believe so.

Q. Did there come a time when -- A. Mr. Dixon had it.

215 Q. Mister who? A. Mr. Dixon had it. It was available to me but I never received it in my possession.

Q. Did there come a time when a letter dated July 27, 1957 was addressed to you by Mr. Amann's firm, and that three-page letter made reference to the documents that were delivered to you by him? A. Yes.

Q. And do you recall the Amann firm requesting that you sign the third page of that letter? A. Yes.

Q. Acknowledging receipt of the documents referred to therein? A. Yes.

Q. Now let me read the second page of that letter and ask you if that refreshes your recollection that you did receive those documents. The letter says:

"We are further enclosing papers of Mr. Edell and photostats of his tax returns which we had segregated into various subfolders for ease in working with them, as, follows: Harry Edell activity memo, Harry Edell 1943 federal taxes, 1944 federal taxes, 1945 federal taxes, 1946 federal taxes, 1947 taxes, Myrna Edell taxes, Davis Edell taxes."

216 Does that refresh your recollection that you did receive various folders enclosing the papers referred to? A. Yes, but there was nothing in the 1947 folder of any consequences. The '47 tax return wasn't there; the '46 tax return was there. It was merely an activity file Mr. Amann set up in 1947, but nothing in there of any consequence.

Q. And did you point that out to Mr. Amann when you executed this receipt? A. Oh, yes, and Mr. Amann has a letter in which he said he had no '47 data.

Q. That would be another letter? A. Yes.

Q. That letter would contradict what is said in this letter of July 27th? A. Oh, no.

Q. Do you have that letter? A. I think we have it. This is the file.

Q. But you do recall signing -- the July 27th letter in the space indicated; do you not? A. There is no signature on here. There was a 27th letter, I guess this is it.

Q. Would you look at that July 27th letter, and after you have read it, advise me as to whether or not you did or did not receive the data referred to in the three pages of that letter. A. I received the

217 data referred to, yes.

Q. All of it? A. Yes, all of it.

Q. Now you made reference to some accountants who had represented Mr. Edell, and I believe you mentioned the name Louis Appel? A. Yes.

Q. And do you recall for how long a period of time Mr. Louis Appel was Mr. Edell's accountant? A. I only recall what Mr. Edell told me.

Q. What was that? A. It was that Mr. Louis Appel had apparently been his accountant for sometime, and that he had been his accountant during the four years and he kept his books for '43, '44 and I believe '45, and he died somewhere in there and lost the books, lost the books of account.

Q. And Mr. Edell told you that Mr. Appel lost the accounts before his death, lost the books of account before his death, is that it? A. No, he didn't tell me that. He told me that Mr. Appel died and that he was never able to find the books or recover the accounting data which Mr. Appel had presumably kept.

Q. But there were some other accountants who succeeded Mr. Appel, were there not? A. Yes.

218 Q. And that was the firm of Oppenheimer, Appel and others; is that right? A. Yes.

Q. And you spoke to Mr. Dixon in that firm? A. Mr. Dixon is one of the gentlemen that I spoke to, yes.

Q. And at any time did Mr. Dixon advise you that the Appel in that firm was the nephew of Louis Appel and that he had worked with Louis Appel during all the time that Mr. Edell was handled by Mr. Appel? A. I don't recall that. I do know there was some relationship between the Appels, and they were two different Appel's.

Q. Isn't it a fact that this firm was simply a continuation of the practice of Mr. Louis Appel who is deceased? A. I have never understood that to be the case.

Q. Did you ever talk to the new Appel in that firm? A. No.

Q. Was his name spelled the same as the other Appel? A. They were two different individuals.

Q. Was the name "Appel" spelled with the same number of letters, the same way? A. I suppose so, I don't know.

219 Q. Now when you spoke to Mr. Dixon of the Appel firm, did he confirm what Mr. Edell you say told you, namely, that all of his records had been lost? A. That his books of accounts, his books for those years had been lost, and Mr. Edell so testified before the tax court.

Q. And the income tax returns, however, had been prepared by this accounting firm, had they not? A. When you say "accounting firm," my belief is that the income tax returns for '43, '44 and '45 had probably been prepared by Mr. Louis Appel before he died.

Q. And filed? A. And filed, yes.

Q. And a substantial tax was in fact paid by Mr. Edell for those years, was it not? A. Not very substantial.

Q. \$78,000? A. I don't know. I have those figures somewhere here.

Q. Well, he paid such a tax as the returns indicated should be paid? A. It was \$1,215 in 1943; it was \$18,000 in 1944; and it was \$23,000 in 1945.

Q. And that is the tax which Mr. Edell actually paid in those years? A. Yes, that's what he reported, and that's what he paid.

220 Q. And those were the taxes that had been calculated from the income tax returns which were filed in those years? A. Yes.

Q. And to your knowledge, were those returns filed on time? A. I don't know.

Q. Now in your experience as a tax lawyer, it's a fact, isn't it, from your experience you know that it's important, extremely important, to have these tax returns specifically for '46 and '47 if you're going to work on the man's tax problems. It was important to have them? A. It's important to have access to them, which I had.

Q. By getting photostats? A. No, by talking to the accountants. The accountants were handling those years with the agent, and they had not passed out of the agent's hands yet.

Q. And they had the tax returns? A. Yes. The Government had a copy and the accountants had a copy. I recall we had a copy of '46. I don't think we had a copy of '47.

Q. But '47 was readily available to you? A. We went down and looked at them, certainly.

Q. And at the request, you could have gotten a copy either from Internal Revenue or from the accountants? A. Certainly.

221 Q. So the fact that you were not delivered the '46 and '47 tax returns didn't substantially hinder you in your representation of Mr. Edell, did it? A. I testified that it was agreed that the 1946 and 1947 would be taken up after renegotiation, after '43, '44 and '45 would be settled. If I was still to handle '46 and '47 at that time, I could go and get the returns, certainly.

Q. So to get back to my question, the fact that you did not have those returns did not hinder you at all in this matter? A. No, they weren't necessary at that time.

Q. Were these records that Mr. Amann delivered to you, as set forth in the letter of July 27, 1954, were they helpful to you? A. They were helpful, not as helpful as I hoped they would be.

Q. And Mr. Amann in fact had correlated all these records in some way, done a lot of that work, had he not? A. Well, he put them in separate files by companies, and he had prepared an affidavit which Mr. Edell had signed in which he made certain statements in respect of those records.

Q. So the answer is there was some correlation? A. Oh, yes; certainly.

222 Q. And the petition in the Tax Court which is what in this Court we would call a complaint, isn't it comparable to a complaint in this Court, the petition that was filed there? A. Yes.

Q. That was prepared by Mr. Amann? A. No.

Q. That was prepared by you? A. No.

Q. Mr. Pittman? A. Well, I don't know.

Q. It wasn't prepared by you? A. It was prepared by the Pittman and Roberts firm and filed by them.

Q. Was it necessary to amend that in any way? A. I don't recall that it was.

Q. Was it necessary to amend this petition in any way during the course of the trial or after its filing? A. I don't recall that it was. I think there was an amendment perhaps at the time of trial to reflect a stipulation, but I don't think there was anything prior to that time. I'm not very clear on that.

Q. And after you got these records from Mr. Amann, didn't you proceed to use those records in building up Mr. Edell's expense picture? A. Well, we proceeded to analyze those records to determine how much expense we could justify or prove Mr. Edell had incurred, yes.

223 Q. And you wrote Mr. Edell on November 16, 1954 that you were building up this expense picture; do you recall writing him that? A. Yes. If the letter is there, yes.

Q. And that was this work that you were doing was based upon these records that had been delivered to you? A. Well, it was based upon those records and other information we had gathered in talking to Mr. Edell, and Mr. Edell produced some supplementary data that

Mr. Amann hadn't had. And then we tried to verify some of his travels by talking to the contractors he worked for.

Q. Now it was Mr. Edell who provided you with additional information? A. Some additional information, yes.

Q. But Mr. Amann, when he had negotiated this settlement arrangement with Mr. Prentice, which provided for \$60,000 of expenses, all he had was the information that was delivered to you on July 27, 1954?

A. Well --

Q. So far as you know. A. I don't know what he had, as far as I know -- I do say that the basis of the settlement proposal was a study made by the Renegotiation Board.

224 Q. I didn't ask the basis of the settlement. A. I don't know that Mr. Amann submitted anything as a basis for the settlement. In fact, the settlement came from Pittman and Roberts' submission of a \$42,000 offer, and it was a response, and I don't know if Mr. Amann submitted anything to the Government at that time.

Q. The offer pre-dated Mr. Amann's representation? A. Mr. Edell's offer was made by Pittman and Roberts.

Q. I'm talking about the Prentice offer. Mr. Edell offered \$43,000, I'm not talking about that. I'm talking about the Government's offer which was the basis upon which the agreement for your employment was -- A. That's right.

Q. That is all I am interested in. Now Mr. Amann did have these records referred to in the letter of July 27, 1954? A. Yes, he did.

Q. At the time he negotiated this settlement, this proposed settlement, and obtained the offer from the Government, did he not? A. I don't know that he negotiated the offer. He had those records at the time he received the letter, or the letter was sent, reflecting the offer with the Government. I don't know whether that offer went to Pittman and Roberts or whether it went to Amann or went to both of them.

Q. And you don't know whether or not the offer of the Government insofar as the expenses was concerned, was based upon the Government's

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examination of the records that were first delivered to Mr. Amann and then delivered by Mr. Amann to you? A. I believe that offer was based on the independent investigation which the F.B.I. had made of Mr. Edell, such records as he had.

Q. Now other than these records that were delivered to you by Mr. Amann, do you know of any other records that the F.B.I. examined? A. No.

Q. So that the F.B.I.'s conclusion, you don't know whether the F.B.I.'s conclusion was based on these records either, do you? A. No.

Q. And when we refer to the F.B.I., do you know whether the agents who actually performed these investigations were Certified Public Accountants? A. No, I don't know who they were.

Q. But you do know that there are in the F.B.I., many Certified Public Accountants? A. I have heard of that.

Q. And you do know that as a matter of practice in tax matters the F.B.I. does employ accountants who handle these tax problems? A. Sometimes.

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Q. You never discussed this matter with anyone from the F.B.I.? A. Oh, no.

Q. Mr. Amann handled all that? A. No, Mr. Amann never discussed anything with anybody from the F.B.I. He discussed only the conclusion with Mr. Prentice and Mr. Hickey. The F.B.I. reports were considered confidential by the Government and were never disclosed to Mr. Edell's representatives.

Q. They were just referred to in conversation? A. That's right. They said we have this information based on our investigations, and they testified as to that before the Tax Court.

Q. Now there came a time when Mr. Laurens Williams appeared on the scene? A. Yes.

Q. And he is a competent tax lawyer, as I believe you testified? A. Yes.

Q. Now isn't it a fact that by December 16, 1958, it was Mr. Williams who was representing Mr. Edell in this matter, and not you?

A. Well, I don't know quite how to answer that. I would say that by agreement I was representing him in 1943, '44 and '45. Mr. Williams was advising Mr. Edell as to whether or not he should take the settle-

227 ment I had proposed that he should take, and then Mr. Williams, by agreement with Mr. Edell, went to work with the accountants to handle '46 and '47. When '43, '44 and '45 had been sufficiently settled and it had been decided to accept that settlement, he went on to the next step, which was 1946 and 1947.

Q. So your answer to my question is you don't know Laurens Williams was Mr. Edell's tax attorney on December 16, of 1958; is that your answer to my question? A. My answer in that Mr. Williams was an attorney who was acting for Mr. Edell with respect to '46 and '47, and to whom I was reporting in lieu of Mr. Edell in respect to '43, '44 and '45.

Q. But on that date you were still Mr. Edell's attorney insofar as the tax liabilities for the years ended December 31st, 1943, '44 and '45? A. I think I was, yes.

Q. And on that date was a copy mailed to you of the audit statement showing the agreed upon tax liability for that year? A. Well --

Q. Or was the copy mailed only to Laurens Williams? A. I don't know.

Q. Let me show you this letter from the United States Treasury Department, Internal Revenue Service, dated December 16, 1958, and
228 call your attention to the third paragraph, which says, "A copy -- " Well, let's refer first to the first paragraph:

"Your income tax liabilities for the taxable years ending '43, '44 and '45, were made the subject of hearings before this office with your representative." Singular.

And then it goes down in the next to last paragraph and says:

"A copy of this letter has been mailed to your representative, Laurens Williams, Esquire, Ring Building, 18th and M Streets, Northwest."

Does that refresh your recollection? A. Yes, this is exactly the

settlement that we had made and had recommended to Mr. Williams -- to Mr. Edell and then to Mr. Williams.

Q. And does that refresh your recollection that it was Mr. Williams who represented -- A. In that transaction it was handled that way.

Q. I'd like to finish my question, if I may.

Does the reading of this letter dated December 16, 1958, refresh your recollection that it was Mr. Laurens Williams who was Mr. Edell's representative in connection with the income tax liabilities for the years 1943, '44 and '45, and not yourself? A. No. The reading of that letter

229 indicates to me that whoever wrote the letter treated Mr. Williams in that capacity.

Q. And the person who wrote that letter and sent the copy to Mr. Williams was mistaken in referring to Mr. Williams as Mr. Edell's representative for the income tax liabilities for those years? A. I was never notified that my authority had been revoked with respect to those years in any way to this date.

Q. Have you ever -- A. And Mr. Edell filed a power of attorney, signed a power of attorney, identifying me as a representative in this matter after the settlement referred to in that letter had been made and after Mr. Williams said that he couldn't do any better than that settlement.

Q. Do you know Mr. Ellis L. Jacker, Associate Chief of the Appellate Division, who signed this letter of December 15, 1958? A. I don't know that I do; never talked to him in relation to this matter anyway.

Q. Now insofar as the income tax liabilities for those years were concerned, isn't it a fact that you could not commence your work on those matters until such time as the renegotiation matter was completed?

230 A. Well, I commenced work on them because many of the matters in renegotiation and income tax were related, they were the same matters, Louis Appel's services, the expenses, so in that sense I worked on them from the beginning. In the sense that we couldn't have any fruitful negotiations looking toward settlement, it's true that that could not be done until the renegotiation matter had been disposed of.

Q. Well, the Internal Revenue people didn't want to spend any time on the tax deficiencies until the renegotiation matters were settled; is that right? A. That's right, but we spent time.

Q. Even though they didn't care to, you did? A. We had to prepare the case, we had to prepare the facts.

Q. But after the renegotiation case was terminated, then you were in a position to discuss the matter with the Internal Revenue people; is that right? A. That's correct.

Q. And when did you do that for the first time? A. I think that was towards the -- in the fall of 1957.

Q. The partnership issue in the income tax matter, as to whether or not there was a family partnership, there was no merit to that contention, was there? A. Well, Mr. Edell had filed a return on the basis that a partnership had existed between him and his brother, he had a written partnership agreement. The Internal Revenue Service
 231 recognized the existence of this agreement but said that it was a sham and that there was no real partnership because Lewis Edell had done no work and had no participation in the activities of the Harry Edell partnership, and before the Tax Court we brought out testimony from Mr. Edell that Mr. Lewis Edell had been active, and none of the companies or witnesses representing the companies from which the Edell partnership had worked, they all testified that they had never seen Lewis Edell, they had never heard of Lewis Edell, and the Government put on the stand an F.B.I. witness who had gone down to talk to Mr. Edell --

* * * * *

232 BY MR. BERLOW:

Q. The partnership arrangement, was it or was it not the subject matter of testimony in the renegotiation case? A. Lewis --

Q. Would you say yes or no, please? A. Yes.

Q. And was it also the subject matter of discussion with the Internal Revenue people? A. Yes.

Q. And in either proceeding was it recognized? A. Judge Heron's

decision says that Lewis Edell rendered insubstantial services, if any, to the partnership.

Q. So she gave no recognition to that? A. She gave no recognition to Lewis Edell.

Q. And neither did they in the Internal Revenue? A. Internal Revenue was never willing to recognize the existence of the partnership.

Q. And that was clear at the outset, was it not? A. Well, it wasn't so clear at the outset. It was clear at the outset that they did not want to recognize a family partnership. Mr. Edell said that such a partnership existed and it could be proven, and it was impossible to prove it before the Tax Court.

233 Q. And there was never any testimony taken before Internal Revenue on it, that was just discussion among the agents, wasn't it? A. That's right.

Q. So then the only other issue so far as taxes were concerned was the issue of expenses; is that right? A. I believe that's right.

Q. And that was ultimately settled in precisely the same amounts as the stipulation before Judge Heron? A. Yes.

Q. Now insofar as the years 1946 and '47 was concerned, you did nothing on that? A. I didn't talk to the Internal Revenue Service, I talked to Mr. Dixon of the Oppenheim firm, but didn't anything beyond that.

Q. And you are making no charge for those years? A. Made no charge for those years.

Q. But in the original agreement it was contemplated, was it not, that you would handle all five years? A. The original agreement said that my compensation would be based upon tax savings for each of the five years, yes.

234 Q. And when this agreement was amended, was it amended in writing? A. Well, I have already testified that it was amended on two occasions in writing.

Q. And did Mr. Edell sign any document saying that you do not have to handle the '46 and '47? A. No. He told me not to, and I

agreed orally.

Q. But he never signed any written statement amending the written agreement in that way? A. Not in any written agreement. He gave Mr. Williams authority to handle those years.

Q. I just have one or two more questions.

Now there was a time in accordance with some case in the Tax Court, it appeared to you that there was some likelihood that Mr. Edell would not be subject to renegotiation at all? A. Yes. We argued very strenuously on that score.

Q. Now assuming that was the result, then assuming that your figure of \$183,000 is the base figure, your fee then would have been 30 percent of \$183,000, or close to \$60,000? A. \$54,900.

Q. And then insofar as expenses were concerned, insofar as the Internal Revenue matter was concerned, you would be entitled to an additional fee? A. Yes. The tax brackets would have been small, so it would have been a smaller fee.

235 Q. But whatever expenses were allowed in excess of the expenses that Prentice had proposed, that would certainly increase or result in a fee to you in the income tax matter, wouldn't it? A. I don't know what you're saying.

Q. Prentice's agreement proposed expenses of \$60,000. A. Proposed a settlement of \$183,000.

Q. And in that proposal there was reference to expenses of \$60,000? A. Yes.

Q. Now if Internal Revenue had agreed that the expenses were in excess of \$60,000, there is no question but that you would have been entitled to an additional substantial fee? A. Oh, certainly, the more expenses I could get Internal Revenue Service to recognize, the larger my fee, certainly.

Q. So if there had been no renegotiation, you would have gotten about \$60,000 on that. A. Fifty-four.

Q. Fifty-four. And then -- \$54,000, and if you took the expenses that Mr. Prentice has proposed and incorporated that in that chart of

yours, you would have gotten a fee substantially in excess, on the income tax matter, substantially in excess of \$8,000? A. I'm not sure about that because I would have had to take \$183,000 out of income -- I wouldn't have taken \$150,000 out of income, so the income

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would have been higher, and the tax brackets would have been different. Of course, I had no power to take it, and the Government -- the Internal Revenue would have to accept it.

Q. You would have gotten some fee though? A. I think I would have gotten a fee, but I don't know whether it would be higher than that or not because your bracket would be different.

Q. Did you estimate what it would be? A. Not without doing a lot of calculations.

Q. And the agreement that you entered into with Mr. Edell did contemplate, we can agree, a fee, if there was complete success, a fee in excess of \$54,000? A. Yes, if I hit a home run and had complete success I would have been entitled to a fee of sixty-some-odd-thousand dollars.

Q. Now if Internal Revenue allowed no expenses, under that arrangement would your \$54,000 fee be reduced in any way? A. No. there would have been no saving in income tax, that's all. I wouldn't have earned anything on the income tax part of it, of the agreement.

Q. Now when Mr. Edell executed -- there are three agreements which he executed, one for one-hundred and thirty-eight on renegotiation, and that was changed to one-hundred and eighty-three, and then the income tax, and they are dated July 28th and August 6th. Now at that

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time was a substantial amount of the assets of Mr. Edell in escrow? A. There was a substantial amount of securities in escrow, I don't know whether that was the substantial part of Mr. Edell's assets.

Q. You don't know whether it was ninety percent of Mr. Edell's assets or whether it was all of his assets? A. I don't know.

Q. At the same time those agreements were executed, was interest running on whatever the indebtedness was to be? A. Yes.

Q. And interest had run -- interest was calculated when this

was all over, interest was calculated from 1943 in one instance, wasn't it? A. Well, I guess it was '44 when the tax return was due.

Q. I see. The interest was calculated from '44, the interest started running in '44, '45 and '46? A. Yes, sir.

Q. And on the renegotiation matter, when did the interest start to run? A. I believe it started to run when the War Contracts Adjustment Board made the determination that Mr. Edell had earned excessive profits of \$282,000.

238 Q. And all during the time that he was negotiating with you in connection with this agreement, these agreements, that interest was running? A. And for about six years prior to that time.

Q. And for six years prior to that time. And during all the period until the matter was finally settled? A. Yes.

Q. And during all of that time that he was negotiating with you as to your fee agreement, these assets of his were in escrow? A. Yes.

Q. And he was unable to use them? A. Well, he was getting the income from them, I believe.

Q. But he was unable to use the principal? A. The principal. He got the income from it, which offset the interest.

Q. But he had to keep that much of the assets -- A. Yes.

Q. Confined. A. The Government wanted more.

Q. The disbursements -- just very briefly -- the disbursements, you have \$50 for a trip to Washington. Let's see, let's refer to your expenses not Mr. Brady. You have the first of September, 1955, travel to Washington, \$50. That is just your estimate of the expenses, is it not? A. Yes, that's right.

239 Q. And the next item is the first of December, \$50, that is also an estimate? A. That's right, airplane fare, taxis.

Q. And that is true as to all of these items, is it not? A. Yes. I imagine so.

Q. You have no documentary substantiation for these items available at this time, do you? A. Not available at this time, no.

Q. Do you have your records showing the time -- is that it in front of it, showing the times? A. These are some notes that I made.

Q. What was your testimony as to the time spent in Washington in 1955 on this matter? A. One trip to Washington in 1955.

Q. And how many trips to Washington in 1956? A. One.

Q. One in -- A. Wait a minute. I'm sorry. 1956 was the time of the trial. I had one trip later in '56, and at the time of the trial I believe I made two trips.

Q. The trial was two consecutive days. A. Yes, but I had to come back -- Judge Heron had us come down to take this stipulation which we made in round numbers, and agree to break it down by years, so we had a subsequent conference, and I may have come down once during the preparation and exchange of briefs.

MR. BERLOW: I have no further questions.

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Casey, you were asked some questions about fraud claims by the Government. Were those oral or in writing? A. Well, they were oral as far as the Government is concerned.

Q. Was that customary? A. Yes. Until the final determination of the deficiency they don't apply the civil fraud penalty.

(Thereupon, Plaintiff's Exhibit 23 and 23-A were marked for identification, and thereafter exhibited to counsel.)

BY MR. MILLER:

Q. I will hand you a letter dated February 18, 1958 to Mr. Laurens Williams from Mr. Edward Brady and ask if that communication came to your attention. A. Yes.

Q. Briefly, what does that communication indicate? A. It says that --

MR. BERLOW: I object to what it indicates. It is very short and to the point, Your Honor.

MR. MILLER: It was easier than having it read was the only reason for the question.

THE WITNESS: It says Agent David Korr contacted us today and he will not wait any longer. He claims he has to set up a 90-day letter and put a fraud charge against Harry.

MR. MILLER: That's enough. I will offer this Exhibit 23 in evidence.

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit 23-A, which is dated November 1, 1957, being a memorandum to Mr. W. J. Casey from Mr. E. J. Brady. Ask you to identify it and tell briefly what it says about the fraud charge. A. It says Korr, the special agent, said he will allow us \$12,000 a year in expenses, he will give us \$2,500 for Lewis' work. He says Feldman, a special agent in charge, who is a fraud investigator, tried to hang Harry on a fraud case. The fraud case came about when Harry gave \$17,000 to a Mrs. Nass to purchase securities in her name for him in 1942.

Harry, for the years 1938, '39, '40 and '41, reported total income averaging \$2,000. The agent made a recommendation for fraud but somehow or other it never came about.

242 Also, in regard to the partnership, Harry, in 1946 closed out his return and admitted no partnership and let all the receipts received in 1946 be taxable to him.

The Agent Feldman could never find the \$5,000 which Lewis was to have contributed.

The companies paid Harry and some of them withheld. Harry claimed the withholdings on his own return. The agent also went to the individual companies and asked if they ever heard of Lewis Edell. The agent has statements to the effect that none of the companies had ever heard of Lewis Edell.

In his affidavit which he had filed with the I.R.C., he claimed that the expenses belonged to him, instead of to the partnership.

They are pretty strong on holding this partnership point and I don't know whether we have a good case or not

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BY MR. MILLER:

Q. Mr. Casey, will you tell the Court what happened to the estimated \$60,000 in expenses mentioned in the Government's offer of \$183,000 settlement, when the \$183,000 offer was rejected by Mr. Edell? A. Well the \$60,000 expense allowance was then not available and the Government said if we went to court we would have to prove all the expenses.

Q. When you went to court, and before you made the stipulation in Tax Court, what figure on expenses was then available to you as far as the Government was concerned? A. Nothing.

Q. And you then moved from a position of zero to a position of \$42,000 on the basis of the stipulation that you testified you entered in

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Tax Court? A. Yes, I did; that's right.

(Thereupon, Plaintiff's Exhibits 24, 25 and 26 were marked for identification.)

BY MR. MILLER:

Q. You were asked about discussions or contact with Mr. Williams in 1958. I will hand you Plaintiff's Exhibit 25 which is a letter from Mr. Brady to Mr. Korr under date of September 17, 1958 and ask you if you will identify that, please. A. Yes, I have seen this letter.

Q. And does that reflect contact between your office and Mr. Laurens Williams in September, 1958? A. Yes, it says As soon as we get word from Williams that the tax liability for the year '46 is determined, we will contact Internal Revenue to close out the years of the taxpayer that we are concerned with, which is '43 to '45.

MR. MILLER: I will offer Plaintiff's Exhibit 25 in evidence.

MR. BERLOW: Who is that letter from and to?

MR. MILLER: From Mr. Brady to Mr. Korr of Internal Revenue. And it refers to conversations they had had among themselves and with

Laurens Williams.

MR. BERLOW: I object to it, Your Honor.

THE COURT: Who is this supposed to be from?

246 MR. MILLER: From Mr. Brady to Mr. Korr of Internal Revenue.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 25, previously marked for identification, was received in evidence.)

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit No. 24, which purports to be a Power of Attorney executed by Mr. Edell on May 20, 1958, revoking previous Powers of Attorney and designating as his counsel Laurens Williams, Kenneth Liles of Washington, and William Casey and Edward Brady of New York, and ask if that is the Power of Attorney that you referred to in your testimony, on cross examination. A. Yes. Mr. Edell made out a new Power of Attorney in which he authorized Williams and Liles and myself and Brady to handle '42 through '46.

Q. Keep your voice up, please.

Then in the fall of 1958, when you were asked by Mr. Berlow, is it your understanding that you and Laurens Williams were both representing Mr. Edell in tax matters? A. Yes. We had the Power of Attorney from the beginning, including that one, and never received any notice of any modifications.

MR. MILLER: I will offer Plaintiff's Exhibit No. 24, Your Honor.

247 MR. BERLOW: No objection.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 24, previously marked for identification, was received in evidence.)

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit 26, being a letter dated August 29, 1957, to yourself, Mr. Casey, from the Department of Justice, signed by Mr. MacGuineas, Litigation Section, setting forth

the renegotiation indebtedness following the determination by the Tax Court. I ask if you received that and if those are the figures that were used in the recomputation. A. Yes, I did receive it, and these are the figures.

MR. MILLER: I will offer into evidence Plaintiff's Exhibit No. 26.

THE COURT: Have you seen this, Mr. Berlow?

MR. BERLOW: Yes. I have no objection to it, Your Honor.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 26, previously marked for identification, was received in evidence. Thereupon, Plaintiff's Exhibit No. 27, was marked for identification.)

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BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit 27, which Mr. Berlow asked you some questions about, referring to it as Defendant's Exhibit No. 3 for identification in your deposition, being a memorandum in re Harry Edell, bearing date 4/21/54, and ask if that is a memorandum reflecting the settlement proposed by J. H. Prentice, December 16, 1953, regarding the excessive profits claim. A. Yes. This is the memorandum on the settlement which adds up to \$183,000.

Q. Will you examine the three figures read to you pertaining to expenses and tell the Court whether occurring opposite the figures appearing there, appears where it is estimated? A. Yes. It shows the figures as expenses, paren (estimated), end paren.

Q. Were those the \$60,000 in expenses, approximately, which were withdrawn by the Government following rejection of the \$183,000 offer? A. Yes. These were estimated expenses. When it was rejected, the expenses were withdrawn.

MR. MILLER: I offer Plaintiff's Exhibit No. 27.

MR. BERLOW: No objection, Your Honor.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 27, previously marked for identification, was received in evidence.)

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BY MR. MILLER:

Q. Mr. Casey, what is the legal rate of interest in the State of New York? A. Six percent.

Q. For obligations which do not bear a specific rate; is that correct? A. Yes, sir.

MR. MILLER: May we stipulate that six percent is also the rate of interest in the District of Columbia, or I will cite the Code.

MR. BERLOW: I will so stipulate.

BY MR. MILLER:

Q. Did you show Mr. Edell the written stipulation that you testified concerning the \$42,000 expenses to be stipulated in the Tax Court hearing on renegotiation? A. Yes. I showed him the draft and I showed him the final stipulation.

Q. Did he agree to it? A. He told me to do what I had to do, what I wanted to do. He said, You're my authority. He agreed it was a wise thing to do.

Q. At the time that you were acting as counsel in the renegotiation hearing on the excessive profits in the Tax Court, was it the desire and intent of Mr. Edell to try to keep from having to pay any excessive profits or restore any excessive profits? A. Well, that's the result he was

250 hoping for, yes.

Q. You were asked some questions about the \$137,000-some-odd-figure which resulted from the computations on \$183,000. A. Yes.

Q. Do I understand you correctly that the \$183,000 settlement offer was the gross amount that Mr. Edell would owe the Government? A. Yes. On the basis of the settlement, if he wanted to accept it.

Q. Would it be necessary then to make certain deductions from the gross amount to arrive at a net amount cash he would owe the Government? A. Yes. We deduct the tax credit the amount by which the payment of tax would be deducted.

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BY MR. MILLER:

Q. Mr. Casey, the Exhibit which you already testified to, I think, had the gross figure of \$183,000, the Tax Court finding of \$150,000, your saving was then \$33,000 upon which you computed your fee? A. Yes.

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BY MR. MILLER:

Q. Mr. Casey, would you tell the Court what was the final gross settlement offered to the defendant by the Department of Justice on renegotiation? A. \$183,000.

Q. Now had that offer been accepted, what credit for taxes would Mr. Edell have been entitled to? A. Mr. Amann estimated it would be \$71,104.03.

Q. That would therefore leave a net amount due to the Government with that adjustment of what?

THE COURT: Just a minute. I didn't get that amount. Credit for taxes would be \$71,000 and what?

THE WITNESS: \$104.03.

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BY MR. MILLER:

Q. That would then leave a net amount due the Government of what? A. \$111,895.97.

Q. Then to that net amount due, would Mr. Edell have been required to pay taxes, to keep them comparable, through March 21 of 1954? A. He would have been required to pay interest.

Q. Interest? A. Of \$25,630.63 up until March 31st, 1954.

Q. Then up to that date what would have been the net cost in cash to the defendant to repay the United States Government had he accepted the \$183,000 offer, and had it been adjusted as you testify? A. Mr. Amann estimated it would be \$137,526.60.

Q. Now, I will direct your attention to the judgment awarded by the United States Tax Court after trial of Mr. Edell's matter. What was the amount of the judgment as excessive profits in that proceeding? A. The Court determined that Mr. Edell had received excessive profits of \$150,000.

Q. Now, making the same kind of adjustment upon that amount, what credit for taxes would Mr. Edell have been entitled to?

258 A. The tax credit on the basis of \$150,000 in excess profits was \$72,773.72.

Q. That would therefore leave a net amount due the Government of what? A. \$77,226.28.

Q. Now, to that if interest is added to the same date, namely March 21, 1954, how much interest would Mr. Edell have owed the Government? A. The interest that would have been payable as of March 21, 1954, would be \$24,390.81.

Q. What, therefore, was the net cost to the defendant under the amount of the judgment awarded by the Tax Court on excessive profits of \$150,000, using the adjustments that you just testified to? A. The net cost as of March, 1954, would have been \$101,617.09.

Q. What savings then would have been obtained by you on the difference between the net cost to the defendant under the offer that was rejected, and the amount that was determined by the Tax Court?

A. The savings on a net basis would be \$35,909.51.

Q. Which, under your thirty percent contingent fee agreement would have amounted to an attorney's fee of what amount? A. \$10,772.85.

259 MR. MILLER: I will offer into evidence, Your Honor, the three exhibits being the posters, and I will offer to furnish at least typescript copies thereof to counsel and the Court.

THE COURT: Very well. Admitted.

(Thereupon, Plaintiff's Exhibits Nos. 17, 18 and 28, respectively, having previously been marked for identification, were received in evidence.)

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RECROSS EXAMINATION

BY MR. BERLOW:

Q. The figure, Mr. Casey, of \$137,526.60, is that the figure that you had in mind when you prepared this agreement with Mr. Edell for the first time? A. No.

Q. The figure of \$138,000, that was inserted in the agreement,

was inserted therein inadvertently? A. It was a mistake, typographical transposition.

Q. So that in your discussions with Mr. Edell, no reference was made to the item designated there as net cost to defendant, \$137,526?

A. No, no mention was made of that at all.

260 Q. Although that figure did in fact appear on the settlement proposal which Mr. Amann had received from Mr. Prentice? A. No, that figure did not appear on the settlement proposal which Mr. Amann received from Mr. Prentice.

Q. That figure did appear in a document prepared by Mr. Amann in which he related the settlement proposal to a determination of the net cost to the defendant? A. Yes.

Q. And that calculation of Mr. Amann's was the subject matter of some discussion between you and Mr. Edell? A. No, it was not the subject of any discussion until I found that the original agreement had contained this mistake, and in looking around Mr. Edell said he had in mind that it was a figure something like that that would be his net cost, and I looked through the papers and I found this memorandum and I wrote Mr. Edell a letter, which is in evidence as one of the exhibits, explaining that if he had \$138,000 it would have derived from this calculation of Mr. Amann's.

Q. But before you wrote Mr. Edell, he did say to you that he did have the figure of \$138,000 in mind because Mr. Amann's calculation had shown to him that the net cost to him was \$137,526, which rounded out to the nearest thousand is \$138,000? A. He said that he had a figure in that neighborhood in mind, yes.

261 Q. Now this chart that has been marked as Plaintiff's Exhibit 28, is based upon the settlement offer by the United States Department of Justice; is that right? A. No, it's --

Q. Well read (a), will you, and tell me what (a) says? (a) says: Final gross settlement offer by United States Department of Justice?

A. That's what it says.

Q. And that refers to the offer made by Mr. Prentice to Mr. Amann? A. Yes.

258 A. The tax credit on the basis of \$150,000 in excess profits was \$72,773.72.

Q. That would therefore leave a net amount due the Government of what? A. \$77,226.28.

Q. Now, to that if interest is added to the same date, namely March 21, 1954, how much interest would Mr. Edell have owed the Government? A. The interest that would have been payable as of March 21, 1954, would be \$24,390.81.

Q. What, therefore, was the net cost to the defendant under the amount of the judgment awarded by the Tax Court on excessive profits of \$150,000, using the adjustments that you just testified to? A. The net cost as of March, 1954, would have been \$101,617.09.

Q. What savings then would have been obtained by you on the difference between the net cost to the defendant under the offer that was rejected, and the amount that was determined by the Tax Court?

A. The savings on a net basis would be \$35,909.51.

Q. Which, under your thirty percent contingent fee agreement would have amounted to an attorney's fee of what amount? A. \$10,772.85.

259 MR. MILLER: I will offer into evidence, Your Honor, the three exhibits being the posters, and I will offer to furnish at least typescript copies thereof to counsel and the Court.

THE COURT: Very well. Admitted.

(Thereupon, Plaintiff's Exhibits Nos. 17, 18 and 28, respectively, having previously been marked for identification, were received in evidence.)

* * * * *

RE CROSS EXAMINATION

BY MR. BERLOW:

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Q. The figure of \$138,000, that was inserted in the agreement,

was inserted therein inadvertently? A. It was a mistake, typographical transposition.

Q. So that in your discussions with Mr. Edell, no reference was made to the item designated there as net cost to defendant, \$137,526?

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Q. And that calculation of Mr. Amann's was the subject matter of some discussion between you and Mr. Edell? A. No, it was not the subject of any discussion until I found that the original agreement had contained this mistake, and in looking around Mr. Edell said he had in mind that it was a figure something like that that would be his net cost, and I looked through the papers and I found this memorandum and I wrote Mr. Edell a letter, which is in evidence as one of the exhibits, explaining that if he had \$138,000 it would have derived from this calculation of Mr. Amann's.

Q. But before you wrote Mr. Edell, he did say to you that he did have the figure of \$138,000 in mind because Mr. Amann's calculation had shown to him that the net cost to him was \$137,526, which rounded out to the nearest thousand is \$138,000? A. He said that he had a figure in that neighborhood in mind, yes.

261 Q. Now this chart that has been marked as Plaintiff's Exhibit 28, is based upon the settlement offer by the United States Department of Justice; is that right? A. No, it's --

Q. Well read (a), will you, and tell me what (a) says? (a) says: Final gross settlement offer by United States Department of Justice?

A. That's what it says.

Q. And that refers to the offer made by Mr. Prentice to Mr. Amann? A. Yes.

Q. Now, taking this approach that you have taken in Exhibit 28 --

* * * * *

BY MR. BERLOW:

Q. . . . and putting it next to Plaintiff's Exhibit No. 18, which is the attorneys fees for reduction of income taxes, we have no chart which would show attorneys fees based on net dollar savings, assuming that the settlement offer by the United States Department of Justice, insofar as it was applicable to income tax, we have no chart which would that, do we? A. There were two separate proceedings, and the same calculations would be made. This is just a comparison.

Q. There were two separate proceedings? A. No matter how the settlement was made --

Q. My question is: We do not have such a chart, do we?

A. There is no such chart, no such comparison; that's right.

Q. We have no such chart. A. There is no relationship.

Q. But, if we took the settlement offer by the United States Department of Justice as the starting point for Plaintiff's Exhibit No. 28, and took the item in there that is applicable to income tax, then we would have to scrap Plaintiff's Exhibit 18 and calculate a new chart, would we not? A. Oh, no, no; we would calculate the same way.

Q. Now I said the item applicable to the income tax that was contained in the settlement offer by the U. S. Department of Justice, the item applicable would be the expenses which Mr. Prentice stated in his offer were allowable? A. I don't believe that would be applicable.

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Q. But in fact, when it came time to settle the income tax case, the stipulation as to those expenses was applicable to the penny; was it not? A. The stipulation as determined by the Tax Court, yes, was accepted to the penny.

Q. And that stipulation eliminated from the case before Judge Heron any question as to the expenses that were proposed by Mr. Prentice, did it not? A. Well, at that time there was no question of expenses proposed by Mr. Prentice. It was a question of expenses Mr. Edell

claimed to have sustained, and they had ranged from zero.

Q. That's correct. A. Which we had to pull from zero.

Q. At the time of the agreement which is the very subject matter of this suit, you had Mr. Prentice's settlement offer in front of you, did you not? A. Yes, I did.

Q. You had considered it? A. Yes.

Q. And that was the very basis for the agreements entered into between you and Mr. Edell? A. That was the basis for the \$183,000 figure.

Q. That's right. Now this new chart shows the computation of attorneys fees based on net dollar savings in renegotiation case, starting off with the settlement offer by the U. S. Department of Justice?

A. Yes.

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Q. Now if in calculating the fee due under those agreements, the fee due for income taxes, if that fee were based upon this settlement offer, there would be no savings, would there? A. Yes, there would be, because the income tax had nothing to do with the settlement offer of renegotiation.

Q. If you took the expenses in the original settlement offer and introduced them into this chart, which is -- A. How could I have done that? I couldn't do that.

Q. Well if you did take the expenses that were stipulated -- A. I didn't take them, the Internal Revenue took them.

Q. I am talking about the preparation of this chart. You did take the expenses that were stipulated? A. No, we didn't. We took the final tax liability that was determined.

Q. But the expenses were the same as that which was stipulated in the Tax Court in the renegotiation? A. The determination of tax liability reflected the expenses stipulated in the Tax Court, yes.

Q. And if you started off with the amount claimed by the Government and eliminated from that what Mr. Prentice conceded to be the expenses you would end up here with a lesser figure than -- by here I

265 mean in the total of amount claimed by Government -- you would end up with a lesser figure than the \$124,000, and it would be a lesser figure than the amount determined so that the savings effected would be less than zero? A. No, that is not true. The Government, the Internal Revenue Service never claimed the tax liability based on the expenses which Mr. Prentice estimated. He never conceded the expenses. He estimated them for the purpose of arriving at his proposal.

Q. If you accept -- A. These were never before the Internal Revenue Service.

Q. But those expenses were accepted insofar as the computation of attorneys fees for the renegotiation were concerned; is that correct? A. The estimate -- the offer of \$183,000 was based on an estimate of expenses of \$60,000, yes.

Q. And those expenses were used in estimating the renegotiation fee in accordance with both of these charts; is that right? A. No, no; no, they are not.

* * * * *

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BY MR. BERLOW:

Q. Both your agreement as to renegotiation and as to income taxes were entered into at the same time with Mr. Edell, were they not, originally? A. Yes, that's correct.

Q. And they were both discussed together, were they not? A. Well, they were discussed in sequence on the same afternoon.

Q. That's right. And you had only one settlement offer before you at the time of those discussions; isn't that right? A. I had one settlement offer on the renegotiation, yes.

Q. And no settlement offer on Internal Revenue? A. I had a determination of deficiency from Internal Revenue.

Q. But no settlement offer? A. And the tax agreement relates to determination of deficiency, not to a settlement offer; only the renegotiation agreement relates to a settlement offer.

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Q. Well that is, the two separate agreements that are now in

court here, but in your deposition there is reference to one agreement which was destroyed. Now what I am asking you is in the original discussion whether or not there was a written agreement which was destroyed -- A. In the original agreement?

Q. In the original discussion, the only settlement offer that was discussed was the renegotiation settlement offer, and that was the basis for the entire agreement, including both renegotiation and income taxes? A. No. The original agreement whether oral or written --

Q. Your answer is no? A. . . . was of two parts, one tax based on determination of deficiency; the other renegotiation based on the settlement offer of the Justice Department.

Q. So that the expenses, even though they were later moved into the income tax matter, in disposing of the matter when you originally discussed it, they were not considered? A. We only considered the amount that the Government was demanding. We didn't know on what basis we would be able to settle or how we would be able to prove the expenses or the other items that had to be proven. They were not

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discussed.

Q. At the time of the agreement with Mr. Edell, was this settlement offer still pending or had it been rejected at that time? A. It was still pending at the time of the agreement.

Q. But at the time of the trial it was rejected? A. It was rejected by both parties a year-and-a-half before the trial, and I moved to bring the case to New York to accelerate the trial.

Q. Was it still pending when the agreement was changed from \$138,000 to \$183,000? A. Yes, it was pending when that occurred.

Q. You said Mr. Edell was hoping that there would be a finding that there were no excess profits? A. Certainly, and so was I.

Q. And so were you? A. So was I.

THE COURT: That all depended upon whether he was soliciting or not, didn't it?

THE WITNESS: Yes. Even if he hadn't solicited, the Government still contended that he was subject to a renegotiation, and we had our arguments based on two decisions of the Tax Court, they had one their way, which indicated that if you could establish he was rendering management services and wasn't soliciting orders, that the Renegotiation Statute was not intended to apply, and we made an argument that introduced testimony trying to support that line of argument.

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THE COURT: You may proceed, Mr. Berlow.

* * * * *

EDWARD J. BRADY,

called as a witness on behalf of the plaintiff, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. DICKEY:

Q. Mr. Brady, would you give the Court and the reporter your full name, please sir? A. My name is Edward J. Brady, B-r-a-d-y.

Q. And where is your office presently located? A. 500 Fifth Avenue, New York 36, New York.

Q. Are you a Member of the Bar of any jurisdiction? A. I am a Member of the New York Bar, District of Columbia, and Federal Bar of the Southern and Eastern District.

Q. And how long have you been a member of the Bar of the first jurisdiction to which you were admitted? A. I have been a Member of the New York Bar since 1951.

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Q. Are you a graduate of a recognized law school? A. I am a graduate of Fordham College and Fordham Law School.

Q. Do you also hold any other degrees, sir? A. I hold a Master's Degree in Accounting from New York University.

Q. And have you engaged in any professional activity other than the practice of law? A. I am a lecturer at the Practising Law Institute. I have lectured at the New York Institute of Taxation, and I have contributed articles to the Institute for Business Planning.

Q. Mr. Brady, have you also been engaged by an accounting firm at one time or another in your business career? A. Yes, I was tax manager for the New York office of a national accounting firm.

Q. What firm was that? A. Alexander Grant and Company.

Q. And when did you first come to work, or do you now work for Mr. Casey? A. I am a partner with him in the firm of Hall, Casey, 271 Dickler, Howley and Brady.

Q. Prior to becoming a partner, were you an employee of Mr. Casey's? A. Yes, I was.

Q. When did you first enter into that employment? A. Either in April or May, 1954.

Q. In connection with that employment did there come a time when you met Mr. Harry Edell, the defendant in this case? A. Yes, there did.

Q. When was that, to the best of your recollection? A. Approximately July, 1954.

Q. How did that come about, sir? What happened? A. Mr. Casey called me into his office, if I recall correctly, introduced me to Mr. Edell, and said we're going to handle his tax renegotiation matters.

Q. Did you then spend any time with Mr. Edell on that particular occasion outside the presence of Mr. Casey? A. Not on that day, no.

Q. Subsequently, did you have any dealings directly with Mr. Edell? A. Yes, I did.

Q. Would you describe briefly what those were? A. Well, Mr. Edell would come into the office quite often. When the files were delivered from Mr. Amann's office we were trying to sort them and get 272 them in some kind of chronological order, and I was trying to build up Mr. Edell's travel and entertainment expenses, and get that in some kind of a system since the previous attorney's accountants had not done that for the years 1943, '44 and '45, and I had to read through all the correspondence which was quite voluminous of Mr. Edell's to get a picture of the case and get some ideas of what had taken place in the

years 1943, '44 and '45, and try to determine the gross amount of income which this so-called partnership received during the years involved and then try to build up some kind of a record of expenses for the partnership in those years.

(Thereupon, Plaintiff's Exhibit No. 29 was marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, did you ever make any trips out of the City of New York on account of Mr. Edell's matter? A. Oh, yes.

Q. Would you describe with more particularity what those trips involved? A. Mr. Edell represented companies during the years 1943, '44 and '45 in the Greater New England area. During that time, I think it started about 1955, I started to visit the companies that he represented, Atlantic Knitting Mill, I visited I think a Mr. Finkelstein; Colonial Knife
273 was a Mr. Palentino; I visited a company of Wiley, Bickford, Sweet, and I think it was in Wooster, and I tried to ascertain from their records the amount of gross which Mr. Edell had received during the years 1943, '44 and '45, and would they be willing to be witnesses in a Tax Court case, if one did occur on this renegotiation problem.

Q. Were you able to determine from these visits what gross payments they made to Mr. Edell? A. Not exactly, no.

Q. Were you able to get any of the persons that you visited to agree to testify in the renegotiation case for Mr. Edell? A. Yes, Mr. Palentino of Colonial Knife agreed to testify, a Jack Owen and Joe Ahern I think his name is, or Heron.

Q. Now going back a minute to your efforts in going through the correspondence and other material that was delivered I believe you said by Mr. Amann to your office? A. Well not himself, but his office.

Q. His office? A. Yes, sir.

Q. Let me show you a folder which has been marked for identification as Plaintiff's Exhibit No. 29, and ask you to take a look at the contents thereof, and do you recognize the contents of that folder?

Q. What are the contents there, Mr. Brady? A. They are my work sheets which I prepared in November 4, 1954, trying to build up Mr. Edell's travel and entertainment expenses by going through the various correspondence to the companies to see which cities he was in on certain days at the time.

Q. And do these various work sheets reflect what you were able to summarize from the various, very voluminous correspondence and other files that were given to you by Mr. Edell and by Mr. Amann's office? A. Yes, they do.

MR. DICKEY: I would like to offer this in evidence, Your Honor, as Plaintiff's Exhibit No. 29.

THE COURT: Have you seen this, Mr. Berlow?

MR. BERLOW: Yes. I have no objection, Your Honor.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 29, previously marked for identification, was received in evidence.)

BY MR. DICKEY:

Q. Incidentally, Mr. Brady, do you recall at any time in working on Mr. Edell's matter when you were in Washington, D. C. and Worcester, Massachusetts on the same day? A. No.

Q. Were you in Washington, D. C. and Worcester on succeeding days? A. No. The reason -- can I explain why they seem to be worried about that?

275 Q. Were you here this morning? A. Yes.

Q. Would you explain that to the Court, please? A. I said on November 14th, \$100.15 which is a check to the United States Treasury Department for photographing the records in the Fine, Wolff and French case so that we could properly prepare the case. We have those photo-stats here today.

Q. So that did not reflect at the time that you were here and also in Worcester on the same day? A. No.

Q. Now Mr. Brady, referring again to Plaintiff's Exhibit 29, did

you total the number of trips that you were able to show or the number of visits that you were able to show Mr. Edell made by year on your recalculation or your recapitulation from the record? A. Yes. For the year 1943, I had Mr. Edell made 81 trips; in '44 he made 113 trips; and in '45 he made 27 trips.

Q. Why were there so few in 1945, sir? A. Well, the war terminated in 1945 and Mr. Edell's business went out with the termination of the war.

276 Q. Did there come a time when you had discussions with the Internal Revenue Service with regard to Mr. Edell's income tax matter? A. Yes, it did.

Q. And did you discuss the travel and expense items in these meetings? A. Yes, I did.

Q. With whom did you speak, sir? A. Mr. David Korr, Appellate Staff of the Treasury Department, 90 Church Street.

Q. Is he what is commonly called a conferee? A. No.

Q. What is his function? A. He is appellate.

Q. He is on the Appellate Staff. And from what report was he considering, or were you considering with him when you were there? He is not the examining agent, is he? A. No.

Q. Did he have a Revenue Agent's report, as far as you know? A. Yes.

Q. Had there been a deficiency determined as a result of the Revenue Agent's report? A. Yes.

277 Q. And were your discussions with Mr. Korr relative to attempting to lower that deficiency? A. Yes.

Q. Do you recall any conversations with Mr. Korr with relation to the expense items? A. Yes.

* * * * *

Q. Mr. Brady, did you have a Power of Attorney to represent Mr. Edell in this case? A. In the tax matter?

Q. Yes, sir. A. I got that in May, 1958.

Q. I see. Have you had many discussions with Mr. Edell with regard to the tax matter? A. Yes.

Q. Did he know, had he asked you to discuss the matter with the Internal Revenue Service? A. Yes, sir.

Q. Were you appearing there on his behalf? A. Yes, sir.

278 Q. I again ask the question as to the relation of the conversation, Your Honor.

THE COURT: Was this after he had given you the power of attorney or before, these discussions that you are being asked about?

MR. BERLOW: We have the power of attorney here, Your Honor.

THE WITNESS: The discussions I had with Mr. Edell was before he gave me the power of attorney.

THE COURT: I thought the discussions that you are being asked to testify about were something that went on down at the Bureau.

THE WITNESS: Yes, ma'am.

MR. BERLOW: This is dated May 20, 1958.

THE WITNESS: Right.

THE COURT: Well, I will overrule the objection.

* * * * *

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(Thereupon, Plaintiff's Exhibit No. 30 was marked for identification.)

(Thereupon, Plaintiff's Exhibit No. 31 was marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, I will hand you what has been identified as Plaintiff's Exhibit No. 31, which is a Power of Attorney dated July 28, 1954, from Mr. Harry Edell to Mr. William J. Casey. Have you ever seen that or a copy of it prior to this time? A. Yes, I have.

Q. Do you know of your own knowledge whether that was filed with the Internal Revenue Service? A. Yes, it was.

Q. Does that Power contain the right of substitution of attorney? A. It certainly does.

MR. DICKEY: I would like to move the admission of this in evidence, Your Honor.

THE COURT: Do you want to see it, Mr. Berlow?

MR. BERLOW: Yes, Your Honor. You can proceed, though.

BY MR. DICKEY:

Q. Mr. Brady, I show you what has been marked Plaintiff's Exhibit No. 30. Have you ever seen that document or a copy of it before?

280 A. Yes, sir.

Q. Was a copy of it filed or exhibited to the Internal Revenue Service by you? A. Yes, sir.

Q. Is this a substitution of you as attorney by Mr. Casey?

A. This gives me the power to talk to the agent, yes.

Q. Right. And is this executed by Mr. Casey before a Notary?

A. Yes, sir.

MR. DICKEY: I move the admission of this into evidence.

BY MR. DICKEY:

Q. By the way, what is the date of this? It is dated 9 December 1957; is that correct? A. That's correct.

Q. Now Mr. Brady, subsequent to the ninth day of December, 1957, did you have any discussions with Mr. Korr with regard to the tax deficiency or the assessment of Mr. Edell? A. Yes, I did.

Q. Would you relate what they were and approximately the time and place where they occurred? A. They occurred -- the meetings were held at 90 Church Street, New York City, which is the Appellate -- it was at that time the Appellate Internal Revenue Service, for the First

281 and Second, and these meetings concerned itself with deficiency for the years 1943, '44 and '45 in regard to the so-called partnership return of Harry Edell, in regard to the travel and entertainment expenses which Mr. Edell took off his tax return, in regard to the salary paid his wife which he claimed, and which at the same time he through in an 843, protective claim in case they found out the wife didn't work for Mr. Edell so withholding tax on her salary would be saved.

It concerned the problems of no books and records and roundly estimating expenses on the tax returns, it concerned cash outlays received from various companies during the years 1943, '44 and '45.

Q. This was then subsequent to the renegotiation case, sir?

A. Yes, it was.

Q. Were you able to get Mr. Korr to accept any figure as settlement, in settlement as far as the expenses incurred by Mr. Edell during the various years? A. Yes, I was.

Q. What was that amount? A. \$10,100.

Q. Were you able to get any additional amount? A. Right. I got his wife's salary, approximately \$4,000.

282 Q. For a total of approximately -- A. \$14,000.

Q. And that was the way this was arrived at in your negotiations with Mr. Korr? A. Right.

Q. Were you at all times working under the direction and reporting to Mr. Casey? A. Yes.

Q. Had you been in consultation and did you advise Mr. Edell of what you were doing? A. Yes.

Q. Now jumping back for a minute to the work you did with regard to witnesses in the renegotiation case, did you ever advise Mr. Edell as to what you had done with regard to interviewing of witnesses? A. Yes.

MR. DICKEY: I ask that this be marked as the next exhibit.

(Thereupon, Plaintiff's Exhibit No. 32 was marked for identification.)

BY MR. DICKEY:

Q. With regard to this advice to Mr. Edell, did he at that time or at any time until this case came up, make any protest with regard to the work you were doing on that matter? A. No. He was very complimentary at certain times.

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(Thereupon, Plaintiff's Exhibits Nos. 33 and 34, respectively, were marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, I hand you what has been marked Plaintiff's Exhibit No. 32 for identification, being a copy of a letter addressed to

Mr. Harry Edell, dated November 21, 1955. Do you recall ever seeing the original of that letter, sir? A. Yes.

Q. Is the copy of that letter from the files of your law office?

A. Yes, sir.

Q. Is that a report to Mr. Edell of a trip to Worcester and to the New England States? A. Yes, sir.

Q. Was this a report that you sent to Mr. Edell? A. Yes, sir.

MR. DICKEY: I move its admission into evidence, Your Honor.

THE COURT: Let's see. You moved 30, 31, 32, 33 and 34?

MR. DICKEY: Yes, I have moved for the admission of 29 and 30, I believe.

THE DEPUTY CLERK: 29 is in. Mr. Berlow has No. 30.

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MR. DICKEY: I have moved the admission, Your Honor, of 29, which is the power to Mr. Casey, and 30, which is the power to Mr. Brady.

THE COURT: Very well, admitted.

(Thereupon, Plaintiff's Exhibit No. 30, previously marked for identification, was received in evidence.)

MR. DICKEY: I am sorry, Your Honor, No. 30 is the power to Mr. Brady -- 29 is the folder -- 31 is the power to Mr. Casey.

THE COURT: No. 31 is admitted.

(Thereupon, Plaintiff's Exhibit No. 31, previously marked for identification, was received in evidence.)

MR. DICKEY: Your Honor, I have just moved the admission of 32 which is the copy of a letter from Mr. Brady to Mr. Edell.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 32, previously marked for identification, was received in evidence.)

BY MR. DICKEY:

Q. Mr. Brady, did you write to various persons who were previously officials of companies whom Mr. Edell represented asking them

to see you or to see if they would testify in the renegotiation case?

A. Yes, I did.

285 Q. Let me hand you a letter addressed to a Mr. Samuel West, dated October 6, 1955, which has been identified as Plaintiff's Exhibit No. 33. Did you write that letter? A. Yes, I did.

Q. And is that typical of the letters you wrote to various persons?

A. Yes, it is.

Q. And you also made personal visits to some of these persons?

A. Yes, I did.

Q. Did you also receive replies from some of the people by mail as well as having seen them personally? A. Yes, I did.

MR. DICKEY: I move the admission of Plaintiff's No. 33.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 33, previously marked for identification, was received in evidence.)

BY MR. DICKEY:

Q. I show you what has been identified as Plaintiff's Exhibit No. 34, which is a letter of October 27, 1955, addressed to William J. Casey, 60 East 42nd Street, attention Mr. Edward J. Brady, signed by Brewer and Company, Joseph C. Hearn, Sales Manager. Have you seen that letter before? A. Yes, I have.

286 Q. Was that letter received by you in the regular course of business? A. Yes, it was.

Q. Is this a letter from Mr. Hearn stating that he would be happy to discuss the possibility of his testifying before the Renegotiation Board -- A. Yes, it was.

Q. In the Tax Court on the renegotiation case? A. Yes.

Q. Now Mr. Brady, do you have any estimate of the time which you spent in working on Mr. Edell's two problems, renegotiation and taxation? A. Yes, I do.

Q. From 1954 to the last time you worked on it? A. Yes.

Q. Would you tell me for 1954 what your estimate of time is and

how you arrive at that, sir? A. I had approximately 120 hours in 1954, and I arrived at this estimate by thinking back and computing how much time it had cost me to read the voluminous correspondence files which Mr. Edell had, and to put this T and E chart together.

Q. What does T and E mean? A. Travel and entertainment chart together, to find out where Mr. Edell was since he hadn't any books and records, and try to get the files in general working order.

287 Q. Now what is your estimate of time for 1955, sir? A. I had approximately 240 hours in 1955, and that consisted of research concerning the Fine, Wolff and French decisions, taking various trips to New England interviewing witnesses, trying to run them down, trying to find out what happened to the companies, what happened to the books and records of the companies that had gone out of business, and also trying to ascertain what records the F.B.I. took from those companies that were still in existence so we knew where we stood in regards to renegotiation matters.

Q. Would you tell us for 1956 what amount of time you spent, sir? A. Approximately 245 hours in the year 1956, and that concerns itself with the trial of the Tax Court, it concerns itself with the computation of the tax credit, and the computation of the figures he used in determining net cash money due the United States Government under the renegotiation case, and the release of the funds for the escrow.

Q. Did you do this work under the supervision and direction of Mr. Casey? A. At all times it was under the supervision and direction of Mr. Casey.

288 Q. In 1957, what amount of time did you spend? A. Approximately 80 hours in 1957, and that was spent mostly with Mr. David Korr, the Internal Revenue Service, and trying to beat down the revenue agent's determination of tax liability.

Q. And did you spend any other time, sir? A. Approximately 60 hours in 1958, concerning the tax matters for the years 1943, '44 and '45.

Q. Mr. Brady, what are those totals, what do those years total in sum? A. Approximately 740 hours.

Q. And at that time do you know what your time was billed for by Mr. Casey? A. Yes, \$20 an hour.

Q. Were you regularly receiving or was the firm receiving that amount of money for the services which you rendered to clients on an hourly basis? A. Yes, it was.

Q. Have you calculated what \$20 an hour is times those numbers of hours? A. Yes, I have.

Q. How much is that? A. \$14,400.

THE COURT: Plaintiff's 34 is admitted. I believe you offered that and I didn't rule on it.

(Thereupon, Plaintiff's Exhibit No. 34, previously marked for identification, was received in evidence.)

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MR. DICKEY: May I have this marked?

(Thereupon, Plaintiff's Exhibit No. 35, was marked for identification.)

(Thereupon, Plaintiff's Exhibit No. 36, was marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, I hand you an envelope containing some photostats. The envelope is labeled Exhibit No. 36, for identification. Would you look at the photostats and tell us what they are? A. These are the complete records of the Fine, the French and the Wolff decisions, which were the three main cases in regard to Mr. Edell's renegotiation problem.

Q. Were those the records that you paid the \$150 to have photostated -- at the Treasury Department -- A. \$100.50.

Q. \$100.50. A. Yes.

Q. Now, did you go through these various records of the briefs and transcripts and records, and make an analysis of them? A. Yes, I did.

Q. I hand you ~~which~~ has been identified as Plaintiff's Exhibit No. 35, consisting of 15 pages. Is that an analysis that you made? A. Yes, it is.

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Q. And is that some of the work which you have testified to here today? A. Yes, it is.

MR. DICKEY: I move the admission of Plaintiff's 35 and Plaintiff's 36, Your Honor.

* * * * *

MR. DICKEY: Is it all right if I proceed on something else, gentlemen, as far as you are concerned?

MR. BERLOW: Yes, please do.

BY MR. DICKEY:

Q. Mr. Brady, I will hand you what has been identified as Plaintiff's Exhibit No. 19, and what is in evidence as Plaintiff's Exhibit No. 19. With particular reference to the fourth page thereof, dated October 7, 1957, and headed Disbursements -- A. Right.

Q. Under that you see a line, E. J. Brady, and various items?

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A. Right.

Q. Are all of the items, to your own knowledge, are all the items listed under your own name there items of expenses incurred by you on behalf of the representation of Mr. Edell? A. Yes, sir.

Q. Would you tell us about each of them, sir? A. Well, the trip to Providence most likely was to see Tony Palentino of Colonial Knife.

Q. Was he one of the witnesses who later testified in the re-negotiation case? A. Yes.

Q. For Mr. Edell? A. Right.

Travel, Washington, that was either to see Mr. Prentice or Leathers.

Q. Are they the two Justice Department men? A. Yes, they were the attorneys for the Justice Department in charge of the case, to ascertain the movement on the calendar to see if we could get some orderly processes for the trial of this case.

Travel to Worcester was either to see Blue or Wiley or Joe Shea or Owen, or somebody else in that area.

The next thing is United States Treasury check, \$100, for the photo-stats for the French, Fine and Wolff decisions.

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Travel to Washington was most likely to see Prentice and Leathers to try to get -- then trying to find out how we could proceed because of lack of documents.

And the rest of the travel to Washington was of the same substance.

Q. Now I believe I asked you the question, whether these expenses are true and accurate accounts to the best of your knowledge and belief?

A. They are.

THE COURT: Had you finished with 35 and 36, Mr. Berlow?

MR. BERLOW: Yes, Your Honor. I have no objection to them.

THE COURT: Very well. Plaintiff's 35 and 36 are admitted.

(Thereupon, Plaintiff's Nos. 35 and 36, respectively, previously marked for identification, were received in evidence.)

BY MR. DICKEY:

Q. Mr. Brady, were you ever present when Mr. Edell requested you or Mr. Casey or both to stop working on the 1946 and 1947 tax settlement? A. Yes. He told us they were in the hands of the accountants, leave them there.

Q. Did he also advise you at any time that Mr. Williams was acting as his alter ego and would have to approve any settlement for 1943, '44 and '45? A. Yes, he did.

Q. Did you have any discussions or were there any discussions had in your presence with Mr. Williams where he did approve the settlement for 1943, '44 and '45? A. Mr. Williams approved the settlements for '43, '44 and '45.

Q. Did you attend the conference with Mr. Williams with Mr. Korr? A. Right.

Q. When was that, sir? A. Oh, 1958.

Q. In the early part of 1958, or the middle of 1958, or do you recall? A. I don't recall. It was 1958.

Q. Where was that conference held? A. 90 Church Street.

Q. And at that conference, did Mr. Williams review with Mr. Korr the settlement that you had effected of the deficiency? A. Yes, he did.

294 Q. Was Mr. Williams able to obtain any better settlement at that conference? A. No, he could not.

Q. Did he ultimately recommend or did he ultimately tell you that he was going to recommend the settlement which you and Mr. Casey had effected for 1943, 1944 and 1945? A. Yes, he did.

Q. Was that tax settlement made? A. Yes, it was.

Q. And approved by Mr. Williams and by Mr. Edell?
A. Yes, it was.

* * * * *

[Filed April 24, 1963]

298 Washington, D. C.
November 26, 1962

* * * * *

301 EDWARD J. BRADY

resumed the stand and testified further as follows:

DIRECT EXAMINATION
(Resumed)

BY MR. DICKEY:

Q. You are the same Mr. Edward Brady who was testifying here when court recessed on Wednesday, sir? A. Yes, I am.

Q. Now, Mr. Brady, did there come a time in your representation of Mr. Edell when you met Mr. Laurens Williams? A. Yes, I did.

Q. Would you tell me approximately what date that was?
A. It was early in 1958.

Q. How did that meeting come about, sir? A. Mr. Edell telephoned and said that he was bringing in a Mr. Williams and he would like to have an appointment and I arranged an appointment and Mr. Edell and Mr. Williams came into the office.

Q. Mr. Edell and Mr. Williams were both present at the same time? A. Yes, they were.

302 Q. And how was Mr. Williams' presence explained to you by Mr. Edell? A. Well, Mr. Edell and Mr. Williams explained to me that Mr. Williams was not acting as an attorney in this case, he was acting as Mr. Edell's alter ego and he just wanted to make the decisions for Mr. Edell because Mr. Edell was under a nervous strain and wanted to take a vacation.

Q. I believe you testified you met with Mr. Williams and Mr. Korr? A. Yes, I did.

Q. Was it on that basis that you met there, that is, Mr. Williams was acting as Mr. Edell's alter ego and not acting as an attorney? A. Yes.

MR. DICKEY: You may examine.

CROSS EXAMINATION

BY MR. BERLOW:

Q. When was it in 1958, did you mention the month in 1958 when Mr. Williams came in? A. No, I said early in 1958.

Q. That would be in January or February? A. In that area, yes.

Q. When was it that the renegotiation case was terminated? A. I think the time for appeal expired about October 1957.

303 Q. So that this was approximately fourteen months after the termination of the renegotiation matter? A. No, I say two months.

Q. This was two months after the termination. When was the renegotiation case actually tried? A. May 1957.

Q. When was Judge Harron's opinion rendered? A. In June -- no, May of 1956 and June 1957.

Q. So how long was it after Judge Harron's opinion, June 1957 to December of 1958? A. No, to January 1958.

Q. January of 1958, and Judge Harron's opinion was in June of 1956? A. '57, I think.

Q. Let's get these dates straight. The case was tried before Judge Harron May 9 of 1956. How long after that, was it, before she rendered her opinion? A. I think the opinion was rendered in June of 1957.

Q. It was a year and a half, a year and one month after that before the Judge rendered her opinion in the matter? A. I believe so, yes.

Q. And after the trial of the renegotiation matter, did you begin to do any work on the income tax matter? A. I started to prepare schedules on the income tax matter, but that was as far as I could proceed.

304 Q. You weren't able to do anything until such time as the Judge had rendered her opinion and you had some finding in the renegotiation matter? A. Yes, that is correct.

Q. And that was the reason why you did not commence work on the income tax matter, because of the relationship between it and the renegotiation matter? A. Well, we commenced work on it, but we couldn't enter formal negotiations with the Internal Revenue Service until the decision of Judge Harron.

Q. What was the work that you did before the decision of Judge Harron was rendered? A. We tried to investigate further this partnership problem of Mr. Edell's, how it would affect his tax matter, also the salary problem which he had with his wife, we had filed an 843 claim for refund on her salary for the years involved and to see how it would affect the whole picture with the Internal Revenue Service.

* * * * *

305 Q. Do you know what the \$14,000 in renegotiation consisted of? A. Expenses.

Q. And do you know what those expenses were? A. All of his expenses.

Q. Including the salary of Mina Edell? A. It could not have.

Q. So there was no definite finding on that, one way or the other? A. That is correct.

Q. Now, in addition to the salary of Mina Edell which was \$3,900, there would be another \$10,000 of expenses, approximately, that was accepted both in the renegotiation and in the income tax matter, is that correct? A. That was accepted in the income tax matter.

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Q. And who was it that you discussed that with, what was the name of the man with whom you discussed the income tax matter?

A. David Korr.

Q. You testified, before we adjourned last week, that you had prepared some detailed travel statements showing Mr. Edell's expenses. Do you recall that? A. Yes, sir.

Q. And that was marked as an exhibit -- your work product was marked as an exhibit in this case? A. Yes, sir.

Q. And to clear the record on that matter, it was Plaintiff's Exhibit No. 29 which is "Analysis of Travel 1943-1945." Would you tell us what that was? A. Mr. Edell had no records and what I did was read all the correspondence from the eight or nine companies that were involved and try to piece together from the correspondence the various places he had been in servicing the nine companies, for the years 1943, 1944 and 1945.

Q. These nine companies were located in different parts of the United States, were they not? A. Most of them were centered in New England.

Q. Where was his place of business, in New York? A. In New York.

Q. And there was travel involved to and from these places?

307

A. Yes, there was.

Q. And was the fact that he had expenses in connection with going to and from those places questioned at any time by any government official? A. Yes, sir.

Q. Did they contend he went from, let us say, New York to Worcester at no cost to himself? A. They disallowed them, the Internal Revenue Service, for lack of proof.

Q. But they didn't contend that he went on the railroad or by automobile at no charge, did they? A. No, they did not contend.

Q. It was just a question of not having the records? A. No proof.

Q. There was adequate proof, wasn't there, that he had done this traveling? A. There was proof as far as I could sustain it, yes.

Q. The only question was, there were no vouchers or tickets or items of that sort showing the actual dollar cost of each trip? A. Yes, plus the amount that he took on his tax return, which was just a flat figure.

Q. So, what you had to do and you spent a great number of hours doing it, was you made a determination of the number of trips, the place to which the trip was made and then you estimated what the railroad fare was during that period of time? A. That is correct?

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Q. My question is, isn't it a fact that the figures proposed by the government in settling the renegotiation matter were also used as a basis for determining the tax liability as well? A. No.

Q. And did you ever see any document from Mr. Amann in which that was done? My question may not be clear. Read that, first, Plaintiff's Exhibit 3, Mr. Amann says in the second sentence:

"I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week."

Now, does that refresh your recollection that later in the week or at some later time, Mr. Amann did send the tax figures based upon the Prentice proposal for settlement? A. I couldn't answer it, this

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letter was addressed to Mr. Edell. But we never saw it.

Q. You never saw the letter which had reference to the tax liability? A. No, I never did.

Q. Now, when you saw this letter, Plaintiff's Exhibit 3, do you recall inquiring of Mr. Edell as to whether or not Mr. Amann had in fact made this calculation that he said he would make? A. No, I never inquired of Mr. Edell.

Q. Do you recall Mr. Casey ever making inquiry of Mr. Edell in that regard? A. No.

Q. Let me ask you this question. Did it occur to you, when you read this letter in September of 1954, when you said you read it, when you read that second sentence, did it occur to you that this computation that Mr. Amann said he would send might be of some help or assistance to you? A. No.

Q. As a matter of fact, you are a certified -- an accountant and an attorney? A. Yes, sir.

Q. And specialize in income tax matters? A. That is correct.

319 Q. Could you tell me, isn't it a fact that tax figures could be given, based upon the Prentice proposal? A. That is correct, they could.

Q. And that you could determine, carrying the Prentice proposal in renegotiation, carrying those figures through into income tax, you could make a determination of what the income tax liability would be?

A. That is correct, if the Prentice proposal was acceptable to the client.

Q. And when you discussed this matter with Mr. Edell, did he ever bring to your attention at any time that it was his understanding that the Prentice proposal was the basis for your fee, both insofar as renegotiation and income tax was concerned? A. The Prentice proposal --

Q. Did Mr. Edell bring that to your attention and make that contention to you? A. Oh, he told me we were on a contingency basis, yes, but he didn't say which way.

Q. And the contingency basis originated and its basis was the Prentice proposal, was it not? A. It was not.

Q. It was the Prentice proposal sofar as renegotiation was concerned? A. Yes.

Q. But it was not the Prentice proposal insofar as income tax was concerned? A. That is correct.

320 Q. Even though you have just testified you could use the Prentice proposal as the basis for both, could you not? A. No.

* * * * *

THE WITNESS: The Prentice proposal is not binding upon the Internal Revenue Service, it is two different agencies involved all together, so what might be acceptable to the United States Government on renegotiation, certainly does not bind the Internal Revenue Service.

BY MR. BERLOW: You say there are two agencies involved, but the parties are the same, are they not? A. No, they are not.

Q. Was Harry Edell the defendant in the income tax matter?

A. Yes.

Q. Was he the defendant in the renegotiation matter? A. Yes.

321 Q. Was the United States Government the plaintiff in the renegotiation matter? A. No, the United States Government through the War Adjustment Contract Board was the plaintiff.

Q. But what was the style of the case in the renegotiation case, wasn't it Harry Edell and Louis Edell v. The United States of America?

A. Yes, but originally the complainant was the War Adjustment Board

Q. And isn't it a fact that in the income tax matter, when it was finally disposed of, that Internal Revenue accepted precisely the same penny figure as to expenses that had been determined in the amount in the proceedings involving the same parties before Judge Harron?

A. Accepted the same amount, yes.

Q. Now, the basis for the income tax agreement, you say, was not the Prentice proposal? A. No, it was the Revenue Agent's Report.

Q. I show you Plaintiff's Exhibit 18 -- it was the Revenue Agent's Report and so much of that report as referred to proposed deficiencies, is that correct? A. That is correct.

Q. Now, pointing to this chart, Plaintiff's Exhibit 18, I ask you whether it was \$124,611.42? A. The original Revenue Agent's Report was \$175,000.

Q. And that appears nowhere on this chart? A. That is correct.

322 Q. In other words, your starting figure was a figure different from the one which is used which was in the Internal Revenue Agent's Report -- the starting figure in Plaintiff's 18 was not the figure used in the Internal Revenue Agent's Report? A. That is correct.

Q. And the figure which was the basis for the agreement is not used in this chart at all, is it, Plaintiff's Exhibit 18? A. No.

Q. Let me show you a letter to Mr. Edell, dated March 8, from Douglas Amann, which is attached to the letter that I originally showed you, dated February 1, also from Douglas Amann to Mr. Edell.

A. Right.

Q. And I ask you to read that and I ask you if that does not refresh your recollection that Mr. Amann had in fact calculated the income tax due based upon the Prentice proposal and set forth in detail, year by year, the income tax liability which Mr. Edell would have incurred, had the Prentice proposal been accepted?

MR. DICKEY: Is this letter in evidence?

MR. BERLOW: You may look at it. I am sorry I didn't show it to you.

MR. MILLER: May we have it marked in the exhibits?

323 MR. BERLOW: I am just asking whether it refreshes his recollection. If it doesn't refresh his recollection, then that will be the end of it.

MR. MILLER: Whether it does or doesn't, the record won't show unless it is at least marked for identification.

MR. BERLOW: I have no objection to that being done.

* * * * *

THE CLERK: Plaintiff's Exhibit No. 37 marked for identification.

(Letter dated March 8, 1954, to Mr. Edell from Mr. Amann, was marked Plaintiff's Exhibit No. 37 for identification.)

BY MR. BERLOW:

324 Q. My question, I am sure you have forgotten it, maybe I have, my question was, now that you have finished reading that letter which has been marked as Plaintiff's Exhibit 37, my question is: Doesn't that refresh your recollection that in September of 1954, after the fee arrangement was made with Mr. Edell, at sometime around that time, doesn't that refresh your recollection that it was brought to your attention that Mr. Amann had in fact calculated Mr. Edell's tax liability, income tax liability, based upon the Prentice proposal? A. No, it doesn't.

Q. Prior to today, have you ever seen that letter before?

A. No, I have not.

Q. But you did see Plaintiff's -- A. Three?

Q. Three. A. Yes, I have.

Q. And isn't it a fact that -- Plaintiff's 3 is dated February 1, is it not? A. That is correct.

Q. And in Plaintiff's 3, Mr. Amann says, "I cannot, however, at this time give you any tax figures although I hope to be able to do so the latter part of this week." My question is, does Plaintiff's Exhibit 37, the letter of March 8 from Mr. Amann, contain the tax figures, which you would understand to be tax figures?

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BY MR. BERLOW:

Q. Now, Mr. Brady, you testified that you spent a total of eighty hours with Mr. Korr. Mr. Korr was employed by the Internal Revenue Service, was he not? A. That is correct.

Q. And your discussions with him centered entirely around the income tax matter, did they not? A. Yes.

Q. And one aspect of the income tax matter was the family partnership arrangement? A. That is correct.

Q. And the other aspect was the expenses incurred by Mr. Edell in the course of earning this income? A. Not only that.

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Q. That was the second issue, is that right? A. That is correct.

Q. And would you say that those were two of the principal issues? A. No, I think the fraud issue was a third issue.

Q. But so far as the figures and calculations were concerned, were there any calculations and estimates required in connection with the family partnership matter? A. Yes, there were.

Q. And were there calculations required in connection with the expense matter? A. Yes, there were.

Q. Now, what were the calculations that were necessary in regard to the expense matter? A. The calculation is to see what it would cost the taxpayer in all instances.

Q. Now, in this case, what were the arithmetical or mathematical calculations in regard to the expenses that you brought to the attention

of Mr. Korr? A. I brought to the attention of Mr. Korr the analysis we had done in regard to his travel and entertainment. I brought to the attention of Mr. Korr the companies he had serviced in New England, the amount of time he had to spend in various cities like Washington and Philadelphia, dealing with the Quartermaster. I brought to the
327 attention of Mr. Korr, to serve nine companies, you couldn't do this by yourself. I brought to the attention of Mr. Korr, in order to do this kind of work, a man needed to have expenses. I also brought to the attention of Mr. Korr that the taxpayer, in doing this, had not kept adequate books and records but he had depended upon an accountant, so no penalty should be assessed. I brought to Mr. Korr the problems of Louis Edell and the partnership, I explained away the securities which he had in his sister's name and used an affidavit to get that explained away, and overcame the record.

Q. What did Mr. Korr make reference to, did he specifically refer -- let me put it this way: Isn't it a fact that Mr. Korr specifically made reference to the stipulation that was entered into in the renegotiation case? A. No.

Q. He, at no time, made reference to it? A. No.

Q. And the fact that the amount settled upon was the same as that in the renegotiation case was a pure coincidence? A. Coincidence, I wouldn't want to call it, it is just that he had a copy of the Tax Court record, the same as we did.

Q. The renegotiation matter? A. Yes.

Q. And had read it? A. Right.

328 Q. He indicated to you he had read it? A. Oh, yes.

Q. And he indicated that to you prior to the time that you settled with him on this \$14,000 figure for expenses? A. That is correct.

Q. But he never mentioned it to you? A. That is correct.

Q. He just said that he had read it, period. A. He said he was familiar with the things that went on in the Tax Court, especially when they argued the case for the partnership.

Q. The Tax Court and the renegotiation matter? A. That is correct.

Q. And he said he was familiar with the expense stipulation that was entered into in the renegotiation matter? A. No, he said he was familiar with the testimony of the FBI agent with regard to Louis Edell.

Q. Louis Edell has to do with the partnership, does it not?
A. That is right.

Q. Well, I am talking about the expenses. A. He never said anything about the expenses in this stipulation.

329 Q. He never brought that to your attention? A. No, he brought the record to my attention, yes.

Q. The record that you had stipulated to the \$14,000? A. No, the Tax Court record.

Q. Which contained this stipulation? A. I am not sure whether it contained it or not.

Q. Wasn't the stipulation filed in the Tax Court as to the \$14,000?
A. I think it was.

Q. Did he bring that stipulation which was filed in the Tax Court record to your attention at any time? A. No, he did not.

Q. Did he indicate he had read that stipulation? A. Mr. Korr indicated he read the record.

Q. Now, you just mentioned this matter of Mr. Edell's sister and certain securities being transferred to her. A. Right.

Q. And that was mentioned to you by Mr. Korr, is that correct?
A. That is correct.

Q. That had been done many years prior to any time you had commenced your discussions with Mr. Korr, wasn't it? A. It was part of the tax case.

Q. But it had been done many years previously, this transfer of securities, had it not? A. Oh, he had done it between 1943, '44 and '45.

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332 Q. Isn't it a fact that Mrs. Edell, who did this typing, paid --
social security payments were made on her behalf? A. Oh, yes, that
is one of the problems.

333 Q. And withholding was taken at that time? A. That is right.

Q. And she paid her income tax on that? A. She also filed a
claim for refund.

Q. But she did pay income tax on the amount? A. Yes, and filed
a claim for a refund at the same time, to protect her claims.

* * * * *

REDIRECT EXAMINATION

BY MR. DICKEY:

Q. What has been marked as Plaintiff's Exhibit No. 37 for identi-
fication, I believe you testified that until this was shown to you in the
court-room today, you had never seen this before, is that correct?

A. That is correct.

Q. Mr. Brady, would you look at the second page of that exhibit,
the third paragraph thereof, and read that, please, aloud.

THE COURT: Is that the same paragraph that Mr. Berlow inquired
about?

MR. DICKEY: No, ma'am, he was inquiring about the calculations.
I am inquiring about what is said in the letter.

THE COURT: Well, now, this letter isn't in evidence. It is
marked for identification.

MR. DICKEY: I will offer it now, Your Honor, since they produced
it.

334 THE COURT: Mr. Berlow?

MR. BERLOW: I have no objection to their offering it in evidence
as part of their case.

THE COURT: Very well, admitted.

(Plaintiff's Exhibit No. 37 was received
in evidence.)

BY MR. DICKEY:

Q. Would you read the third paragraph on the second page of that letter? A. (Reading:)

"You will understand, of course, that there is no guaranty that the Internal Revenue Department will accept the items of expense which have been allowed by the Department of Justice. In the absence of definitive advices from them, however, there is no other basis on which I can calculate your approximate tax liability."

Q. Now, Mr. Brady, did the -- even the Department of Justice, did they allow the \$60,000-odd of expense put forth in the Prentice letter when you went to trial in this case, in the renegotiation case? A. No, they did not.

Q. And did you discuss with Mr. Korr, on the tax case, the expense items that were in the original Prentice report, at any time? A. No, I did not.

335 Q. Did you discuss with Mr. Korr the fact that there had been an allowance of \$14,000 in the renegotiation case? A. Yes, I did.

Q. So that you brought it up rather than Mr. Korr bringing it up? A. That is correct.

Q. What did Mr. Korr say with regard to this? A. That is not binding on them, referring to the Treasury Department.

Q. Now, with regard to the Exhibit appearing over here, "Attorney's Fees For Reduction Of Income Taxes," which is Plaintiff's Exhibit No. 18, the figures under the column "Amount Claimed By Government" totaling \$124,000, how were they arrived at, sir? Let me withdraw that. Were these figures arrived at in your discussions with Mr. Korr? A. Yes.

Q. And the original figures, the total original figure was \$175,000 and some dollars? A. That is correct.

Q. And how did Mr. Korr arrive at these figures, if he told you? A. By taking the excessive profits out for the years 1943, '44 and '45.

Q. In other words, by reducing the amount of income by the amount that Mr. Edell had to pay back in each year under the renegotiation case? A. That is right, as determined, yes.

* * * * *

THE CLERK: Plaintiff's Exhibit No. 38 marked for identification.

(Computations of Mr. Brady, on yellow sheet, was marked Plaintiff's Exhibit No. 38 for identification.)

BY MR. DICKEY:

Q. I hand you what has been marked as Plaintiff's Exhibit No. 38 for identification and ask if you have ever seen that paper before?

A. Yes, I have.

Q. Are those your calculations on that paper, is that your writing on that paper? A. Yes, it is.

Q. When did you prepare that, sir? A. Last week.

Q. Now, would you relate from that paper, what was the original deficiency claimed by the government prior to the renegotiation case and the original Revenue Agent's Report for 1943? A. \$19,393.81.

Q. 1944? A. \$50,712.85.

Q. 1945? A. \$105,837.63.

337 Q. And the total was? A. \$175,944.29.

Q. The ultimate deficiency assessed was how much, sir?
A. \$175,944.29.

Q. That was on the deficiency assessed in the original Revenue Agent's Report. A. That is correct.

Q. Then in your discussions with Mr. Korr, he gave credit for each of the years of the renegotiation case and the amount paid back by Mr. Edell? A. That is correct.

Q. The figure \$16,406.52 -- or whose figure is \$16,406.52?
A. That is the Revenue Agent's.

Q. That was then made by Mr. Korr in your discussions with him? A. That is correct.

Q. Is the same thing true with the figure \$32,907.71? A. That is correct.

Q. And \$75,297.19? A. That is correct.

Q. The total then would be \$124,611.42? A. Correct.

Q. In your calculation of the fee, are you taking the savings between the original Revenue Agent's Report -- A. No, we are not.

338 Q. -- and the ultimate amount paid? A. No, we are not.

Q. What are you doing, for purposes of calculation of the figure?
A. We are adjusting to the Revenue Agent's Report, after the excessive profits case, so the adjusted Revenue Agent's Report and the difference between that and the amount as finally determined would be our figure.

Q. Now, Mr. Brady, you were asked as to whether you had ever discussed, I think the question was, "have you ever discussed this matter with Mina Edell?" A. Right.

Q. Or this entire matter with Mina Edell, I am paraphrasing Mr. Berlow's question, and your answer was no. Would you tell us whether you ever attempted to? A. No, because she was divorced from Mr. Edell at the time I got into the case.

Q. Did Mr. Edell advise you not to talk to her? A. That is correct.

* * * * *

BY MR. DICKEY:

Q. Mr. Brady, in answer to Mr. Berlow, when he asked if the ultimate tax figure could have been negotiated from the Prentice proposal, in the renegotiation figure, I believe you said yes, is that
339 correct? A. On a hypothetical basis, yes.

Q. On a hypothetical basis? A. Yes.

Q. What hypothesis would be required to make such a calculation?
A. The hypothesis that everything accepted by the Department of Justice would be acceptable by the Internal Revenue Service and that everybody agreed to settling as proposed by Prentice.

Q. And in the Exhibit No. 37, is that made plain by Mr. Amann in his letter of March 8, 1954?

Let me withdraw the question and put it another way: Are the Amann calculations made on the basis that the Internal Revenue Service

would accept the Prentice figures in the renegotiation's original \$183,000 proposal? A. Yes, according to this letter.

Q. And does the Amann letter also indicate that there is no assurance that the Internal Revenue would do this? A. Yes, he does.

Q. In the brief of Mr. Amann which Mr. Berlow handed you and asked you various questions concerning that, did that brief go into the previous briefs that had been filed in the Wolff, Fine and French cases, in their renegotiation cases? A. No, it did not.

340 Q. Did you feel it necessary to do so in order to prepare the case for Mr. Edell? A. Oh, yes, I did.

Q. And did you do so? A. Yes, sir.

Q. When Mr. Berlow was questioning you as to whether Mrs. Edell had ever filed an income tax return and social security tax return, I believe you said she had paid social security, is that correct?

A. That is correct.

Q. And did you characterize that as one of the problems?

A. Yes, it was.

Q. How was it a problem? A. Well, at the same time that -- or sometime previous to when we got in the case, Mr. Edell had taken off Mrs. Edell, then Mrs. Edell, as an employee of the partnership and since the original Revenue Agent's Report intended to knock her out, 843 protective claims were filed with the United States Treasury to recoup any income taxes she had paid during the years 1943, '44 and '45, in case of disallowance, her salary was disallowed, by Internal Revenue Service, in other words, he wouldn't be taxed twice. So, at the same time we had to take a deduction on the tax return for an employee, we also filed a refund claim that she was an employee.

341 MR. DICKEY: I would like to offer in evidence Plaintiff's Exhibit No. 38.

THE COURT: Have you seen it, Mr. Berlow?

MR. BERLOW: Yes, Your Honor.

THE COURT: Admitted.

(Plaintiff's Exhibit No. 38 was received in evidence.)

* * * * *

RECROSS EXAMINATION

BY MR. BERLOW:

Q. Mr. Brady, I have in front of me Plaintiff's Exhibit No. 38, and I see the figure \$175,000. Is that what you would call the deficiency proposed by the United States Government? A. By the Internal Revenue Service, yes.

Q. And would you tell me what the amount repaid by Mr. Edell, as a result of renegotiation, was? A. As a result of the renegotiation case, about \$75,000 in principal and about \$35,000 in interest.

Q. About \$110,000? A. \$110,000.

Q. Now, in the determination of the fee, did you reduce the deficiency -- I will withdraw that question. In the preparation of Plaintiff's Exhibit 18, is there a calculation which shows that the deficiency proposed by the United States Government has been reduced by the amount repaid by Mr. Edell to the United States Government as a result of renegotiation? A. Yes, that is the figure there.

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Q. And would you show me -- now, the deficiency proposed is \$175,000, right? A. The original deficiency proposed.

Q. And the amount repaid as a result of renegotiation was \$110,000? A. Right.

Q. Would you show me on that chart -- let me put it this way: Can you show me on that chart where \$175,000 is reduced by \$110,000? A. Not on that chart, no.

Q. Getting back to Mr. Dickey's questions in reference to Plaintiff's Exhibit 37, Mr. Amann says, let's read the whole paragraph that Mr. Dickey read, again:

"You will understand, of course, that there is no guaranty that the Internal Revenue Department will accept the items of expense which have been allowed by the Department of Justice."

Now, I want to call your attention to the second sentence, particularly:

"In the absence of definitive advices from them, however, there is no other basis on which I can calculate your approximate tax liability."

Now, my question, is do you know now of any other basis upon which at that time the approximate tax liability could have been calculated?

A. Oh, yes.

343 Q. And what was that? A. Well, he could have got \$150,000 for expenses.

Q. Was there any other document or any other proposal, or document or anything, that had originated from the government other than the Prentice proposal, upon which you could approximate the tax liability? I am not talking about pulling a figure out of the air, I am talking about something that existed, upon which you could base the tax liability.

A. Well, you could always base your tax liability on the Revenue Agent's Report.

Q. And that made no allowance for expenses at all? A. That is correct.

Q. That made no allowance for the fact that Mr. Edell had had elaborate correspondence with these factories and had employed somebody to do it, did it, that report? A. That is correct.

Q. It made no allowance for the fact that he had made all of the trips that you have set forth in your Exhibit where you detailed the trips. A. The government doesn't make an allowance, Mr. Berlow, you have got to prove the deductions you have taken on your tax returns, so it can be sustained.

344 Q. But the deficiency proposed was based upon the assumption that Mr. Edell had not expended anything? A. Because he didn't show his books of records.

Q. The answer to my question is yes? A. Yes.

Q. But the Prentice proposal did assume certain expenses?

A. Yes, that is true.

Q. So that the contingency -- now, at any time, let me ask you this question, at any time when these agreements, fee arrangements, with Mr. Edell were drafted and changed and amplified and supplemented, as they were, you recall that taking place, do you not? A. Oh, yes.

Q. There was the first agreement of 138, which was changed?

A. I don't know anything about that first agreement.

Q. But you have seen it in the record here? A. I heard about it, yes.

Q. Then there was an agreement of 183? A. That is correct.

Q. Both of those were signed by Mr. Edell? A. Right.

Q. There was a separate tax agreement signed by Mr. Edell, making three? A. That is correct.

Q. And an agreement on the interest, signed by Mr. Edell?

345

A. That is correct.

Q. And there was an agreement which provided that there be no settlement without his authorization, do you recall that one, signed by Mr. Edell, as to the \$7,500 refund? A. That is correct.

Q. There were five agreements signed by Mr. Edell? A. Four or five.

Q. Then, there has been some testimony as to an original agreement, which may or may not have been destroyed? A. That is correct.

Q. That would make six agreements? A. Five agreements.

Q. With the one that was destroyed, that would be six agreements signed by Mr. Edell. Let's assume five or six, it doesn't make much difference. My question is, though, at anytime, was it explained to Mr. Edell in your presence, that the contingency fee arrangement that he had made insofar as it was applicable to income taxes, that it pre-supposed that he had earned \$300,000 without spending a nickel? Was anything like that ever said to Mr. Edell in your presence? A. No, there was not.

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REDIRECT EXAMINATION

BY MR. DICKEY:

Q. Mr. Brady, Mr. Berlow asked you if that chart, if you had shown on the chart which is Plaintiff's Exhibit 18, if you have shown any place on that chart the deduction of the \$110,000 ultimate cash payment on the renegotiation case from the \$175,000 tax deficiency. Your answer was no. Would you deduct the \$110,000 renegotiation fee from the tax deficiency? A. Oh, no.

Q. Why not? A. You would take out the excessive profits for the year as determined by the court, which were \$26,000 for the year 1943, \$54,000 for the year 1944, and \$70,000 for the year 1945. When the excessive profits were taken out of the individual's income tax, you then would recompute the tax with the excessive profits taken out. The amount paid to the Renegotiation Board had nothing to do with the re-computation of the individual's income tax.

Q. The Plaintiff's Exhibit No. 6, which is the letter agreement of July 28, 1954, regarding income taxes, does that state the method of calculation of the fee for the income tax case? A. Yes, it does.

347 Q. What is it based on? A. It is based upon the original Revenue Agent's Report which was \$175,000 deficiency.

Q. No, I mean in the letter itself, does it state it is based on the tax deficiency? A. Yes, it does.

Q. And where was that tax deficiency first asserted? A. In the Revenue Agent's Report.

Q. And in what amount was that? A. \$175,000.

* * * * *

MR. DICKEY: At this time, Your Honor, we would withdraw the large charts except for purposes of showing them during the course of trial and substitute therefor the typewritten copies which I think have been prepared, have they not, Mr. Berlow?

* * * * *

348 THE COURT: Very well. Then, these are received in lieu of the large exhibits placed on the blackboard, as nos. 17, 18 and 28?

* * * * *

THE CLERK: "Attorney's Fees for Reduction Of Income Taxes" is marked as Plaintiff's Exhibit No. 18A and received. Plaintiff's Exhibit 18 is withdrawn.

(Plaintiff's Exhibit No. 18 was withdrawn; Plaintiff's Exhibit No. 18A was substituted therefor and received in evidence.)

* * * * *

THE CLERK: "Computation of Attorney's Fees For Reduction of U. S. Government's Excessive Profits Claim" is marked as Plaintiff's Exhibit 17A and received. Plaintiff's Exhibit 17 is withdrawn.

(Plaintiff's Exhibit No. 17 was withdrawn; Plaintiff's Exhibit No. 17A was substituted therefor and received in evidence.)

* * * * *

349 THE CLERK: A copy thereof is marked as Plaintiff's Exhibit 28A and received. Plaintiff's Exhibit 28 is withdrawn.

(Plaintiff's Exhibit No. 28 was withdrawn; Plaintiff's Exhibit No. 28A was substituted therefor and received in evidence.)

* * * * *

EDWARD J. BRADY

resumed the stand and testified further as follows:

RECROSS EXAMINATION

* * * * *

BY MR. BERLOW:

Q. Referring to Plaintiff's 18A, Mr. Brady, the first column, that represents, does it not, a reduction of the taxable income by the amount repaid in renegotiation, is that right. A. No. It is the recomputation of the individual's tax after taking out of income, for the year

1943, the excessive profits of \$26,000, as determined by the Tax Court, \$54,000 for the year 1944, as determined by the Tax Court, and \$70,000 for the year 1945, as determined by the Tax Court.

350 Q. Well, you reduced the income, upon which the original deficiency was based, by the amount repaid in renegotiation? A. No, it is not. It is done by taking out of income for the year 1943, the excessive profits of \$26,000 determined by the Tax Court, the excessive profits of \$54,000 in 1944 as determined by the Tax Court, and excessive profits of \$70,000 for the year 1945 as determined by the Tax Court.

Q. You say taking out? A. Of income, yes.

Q. And when you take it out, you reduce the income by the amount that is taken out, is that right? A. That is correct.

Q. So another way to say it is, you reduce the income by the amount repaid -- A. No, it is not.

Q. Well, then, if it isn't -- you didn't reduce the deficiency proposed, you did not do that? A. The original deficiency proposed by the Revenue Agent's Report was \$175,000. After reducing the taxpayer's income by \$26,000 in the year 1943, \$54,000 in the year 1944, and \$70,000 in 1945, Mr. Korr of the Internal Revenue Service issued a revised Revenue Agent's Report showing a deficiency of \$124,611.42.

351 Q. You recall just saying that you reduced the taxpayer's income? A. I said you take out of income.

Q. You just said, would the reporter read back the answer, I would appreciate it.

THE COURT: Just a minute. Wouldn't it be correct to say that this excessive amount, allegedly claimed in these renegotiation proceedings, was something that Mr. Edell had to pay back, wasn't it?

THE WITNESS: Yes, but he took a tax credit for it, too, Your Honor.

THE COURT: Yes. Well, then, after he got through doing that, it was no longer, since it was not income to him, these excessive profits and he had to pay them back, so to speak, then that was eliminated from the claimed amount of the income tax, was it not?

THE WITNESS: Correct.

THE COURT: And that is why you say that from \$175,000, there was taken these various amounts of \$16,000 -- so as to reduce it to \$16,406.52, and then \$32,000 in the year 1944 and \$75,000 and some odd dollars and cents in 1945. Isn't that what you are saying?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Now, go ahead, Mr. Berlow.

BY MR. BERLOW:

352 Q. But you didn't reduce the \$175,000 by the amount he repaid, did you? A. No. You are mixing apples and oranges.

Q. You reduced the taxpayer's income by the amount repaid?

A. You take out of income the amount determined as excessive profits, for the years involved, by the Tax Court of the United States.

Q. You did not take it out of the deficiency proposed, did you?

A. No, we did not.

MR. BERLOW: I have no further questions.

MR. DICKEY: Again, we rest, Your Honor.

THE COURT: All right. You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

MR. BERLOW: I would like to make a motion for a directed verdict at this time.

THE COURT: Very well, I will deny your motion.

* * * * *

HARRY EDELL

the defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BERLOW:

353 Q. Would you state your full name? A. Harry Edell.

Q. Where do you live? A. 5601 River Road, N. W., Washington,

D. C.

Q. How are you employed at the present time? A. I am award consultant for overseas projects.

Q. What does that work involve? A. Well, it involves negotiating projects in the under-developed countries and bringing to them the necessary equipment for the drilling of water wells so that they can produce food in a hurry.

Q. Now, going back to the years 1943, 1944 and 1945, how were you employed at that time? A. At that time, I organized a company with my brother for the purpose of research and development of peacetime factories into war work. Our method of procedure was to reorganize these factories in every detail from the things that they were manufacturing to the things that the government wanted in the war effort.

Q. Could you give us just one example, very briefly, a concrete example of what you did with one factory in one particular instance?

A. Well, in the case of Wiley-Bickford-Sweet, which was probably the largest one, they had been manufacturers of very cheap carpet slippers for almost a century in Worcester, Massachusetts. They had

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attempted to do this war work and they had lost a considerable amount of money on their first project. They sought me out through a brother-in-law of Brewer and Company in the same city and I conferred with them and I asked for an analysis of all their machinery and equipment. With this analysis, I went to the proper sources in the War Development Board which were known as the Machinery and Development Section and discussed this type of machinery with these men, in order to ascertain what kind of things could be done for Wiley-Bickford-Sweet so that they could get into this war work. If they didn't get into the war work, they would have been out of business because it required priorities to get any kind of materials to exist.

With that information, I then traveled throughout the United States, in various government agencies, in the research departments, seeking out the kind of things that would be comparable to the machinery that Wiley-Bickford-Sweet owned and the type of labor which they had

at that period and in the course of doing this research and development, we would ascertain what they could do. In many instances, we acted as, as I might use the term, guinea pigs for these research departments in expending a great deal of time and money in trying to build something for them that hadn't even been established.

Q. Now, did Wiley-Bickford-Sweet, were they converted from carpet slippers to a war effort? A. They were converted from carpet
355 slippers to such items as life preservers, ponchos, sleeping bags, and in one instance the great Knutson vest, which was being prepared secretly for the purpose of the fliers that flew over the Pacific on the anticipated attack in the islands over there.

Q. Did you have an arrangement with Wiley-Bickford-Sweet as to your compensation? A. I did.

Q. Briefly, what type of arrangement was that? A. The type of arrangement we had was a service fee and this service fee was based on the amount of finished material that the United States Government Agencies accepted from them. In many instances, there were times when they had contemplated returns and those items were deducted.

Q. Were you paid by these various companies from time to time for the work that you did? A. I was. As a matter of fact, they were the bookkeepers for us.

Q. In other words, the amount of your fee was determined by their records? A. Exactly.

Q. And they remitted payment to you, based upon the amount of the contracts that had been obtained? A. That is correct. May I add that in many instances, when there was a repeat type of requirement from the government, such as life preservers in the Navy Department in Philadelphia, where we had originally taken a contract for, say, 100,000 of these and then they wanted 50,000 more, these contracts were all competitive by law, there had to be a minimum of three bids unless there was an extreme urgency, which was very rare in any of our factories at all. In those instances, I forewent any service fee at all

in order that the labor, the stream of labor would continue, in as much as they had already developed out the bugs in the original thing and it was much simpler for us to continue.

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BY MR. BERLOW:

Q. Now, prior to 1943, had you filed income tax returns?

A. I did.

Q. Had you filed income tax returns -- do you recall for how long a period prior to 1943 you had in fact filed income tax returns?

A. I filed every year when I had income.

Q. Prior to the year 1943 or prior to the year involving your tax for 1943, had it ever been brought to your attention that your pay-

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ment of tax was deficient in any way? A. No, sir.

Q. Had any communication to that effect ever been sent to you by the Internal Revenue Service for the Department of Justice?

A. Not to my knowledge.

Q. Prior to 1943, would you just briefly again tell us who -- tell us, first, who prepared your income tax returns, what was his name? A. You are asking prior to 1930 --

Q. 1943. A. 1943, prior to that?

Q. Yes. A. Well, there was a gentleman in New York at that time by the name of A. M. Rosenthal. He was a CPA.

Q. And had he prepared your income tax return? A. He did.

Q. And had you provided him with information in that regard?

A. That is correct.

Q. And did there come a time when someone else prepared your income tax return? A. Yes, sir.

Q. What was his name? A. Louis Appel.

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Q. And what was the first return that he filed for you?

A. The first return he filed for me was 1942.

Q. And what were the returns he filed subsequent to that?

A. 1943, '44 and '45.

Q. And then what happened in 1946? A. Mr. Louis Appel became very ill and had to go to Florida. He had a heart attack.

Q. And who prepared your returns for the following year?

A. Mr. Payson, who was a member of the firm of Appel and Brock. The Mr. Appel in this company just mentioned was a brother of Louis Appel and Mr. Payson worked for that firm and it was in the same identical office.

Q. Were your returns filed for 1943, '44 and '45. A. They were.

Q. And did you deliver certain information to Mr. Appel in this regard? A. I did.

Q. And he prepared the returns based upon this information?

A. He did.

Q. Can you tell us generally what the information was that you delivered to him? A. I delivered to him the railroad, airline, hotel, incidental expenses in voucher forms, plus an analysis of these items.

Q. That is in regard to expenses. Did you deliver to him a list of your income? A. Yes, sir. He received the entire list of each check that was sent to me at the end of a month with the statement that the factory always accompanied the check.

359 Q. He retained all these records? A. He did.

Q. Did you maintain an office at all during this period of time?

A. At 66 Rector Street, New York City.

Q. And did you have any employees? A. Mrs. Edell, Mina Edell.

Q. Was she paid a salary? A. She was.

Q. And was there correspondence connected with the preparation of documents connected with this work? A. Yes, sir.

Q. Was it, would you say, voluminous or minor or what?

A. It was a voluminous amount of correspondence.

Q. Were there forms to be filled out for the government?

A. The forms, the actual forms that were to be filled out for the government were always filled out in the factories by the controllers of the factories, themselves.

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Q. Had you filed income tax returns -- do you recall for how long a period prior to 1943 you had in fact filed income tax returns?

A. I filed every year when I had income.

Q. Prior to the year 1943 or prior to the year involving your tax for 1943, had it ever been brought to your attention that your payment of tax was deficient in any way? A. No, sir.

357

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Q. And had you provided him with information in that regard?

A. That is correct.

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Q. Was it, would you say, voluminous or minor or what?
A. It was a voluminous amount of correspondence.

Q. Were there forms to be filled out for the government?
A. The forms, the actual forms that were to be filled out for the government were always filled out in the factories by the controllers of the factories, themselves.

Q. And you corresponded with the factories, that was the principal bulk of your correspondence, is that right? A. Occasionally, I would correspond with the heads of the research departments in the various government agencies in relation to things that we were researching for them.

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Q. And did Mrs. Edell handle all this correspondence? A. She handled, I would say, about 80% of it. Frequently, I would have to have things typed when I was out of town and I would go to the secretaries in the various hotels and have it done.

Q. And you would pay them for that? A. I would pay them for that.

Q. Now, when these returns were prepared by Mr. Appel, would he deliver the completed return to you? A. He did.

Q. And you executed it? A. I did.

Q. Do you recall how much it was that you did in fact pay in income tax during these three years? A. I cannot tell you that, Mr. Berlow. I don't really remember.

Q. Did there come a time when it was brought to your attention that the United States Government was raising some question as to your tax indebtedness to it? A. Yes, there was.

Q. Would you tell us approximately when that was? A. I believe it was in the year 1948.

Q. And how was that brought to your attention? A. I received a notice from the Renegotiation Board to fill out a tremendous amount of forms and in as much as I did not have the time nor the patience nor the knowledge with which to do it, I sought out Mr. Appel and asked him whether he could do it and he wasn't available because he was in Florida. So I just neglected doing it, that is about all, because I was on the road all the time.

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Q. Did there come a time when you did fill out that form?
A. Yes, there was.

Q. And did you obtain any assistance in doing that? A. I went to

the various factories and had the controllers try to fill in the figures that pertained to their particular factories.

Q. Did there come a time when you hired some professional person, an accountant or an attorney to assist you in this matter?

A. Well, I asked Oppenheim Appel, who succeeded Louis Appel, if they would attempt to go into the renegotiation matter and they said they had no experience in that direction at all.

Q. Did you hire somebody else? A. The first man I hired was Pittman & Roberts in Washington, D. C.

Q. And when was it that you retained them? A. I believe that was sometime about 1948, the latter part of it.

362 Q. Now, about the same time, were you advised that your income tax payments were also questioned? A. Yes.

Q. And did you retain somebody to handle that, as well?
A. Pittman & Roberts were the ones who handled both things.

Q. And from that time on, were both of these matters handled by the same firm? A. Yes, sir.

* * * * *

BY MR. BERLOW:

Q. Now, was there a person, a man in the law firm of Pittman & Roberts who worked on this matter for you? A. Yes, sir.

Q. What was his name? A. His name was Mr. Roberts.

Q. And for how long a time did he work on this matter?

A. He worked on this matter for about eighteen months to two years.

363 Q. And then his employment was terminated. What resulted in his stopping work on it? A. He just died.

Q. And did someone else then -- A. Mr. Pittman then assigned a Col. Taylor, who was in the office, to do the same work and pick up from that point.

Q. And did Mr. Taylor do some work on this matter? A. Yes, sir.

Q. And how long a period of time did he work? A. I would say for about a year, a year and a half.

Q. And then what caused his stopping to do work? A. He resigned from the firm of Pittman and Roberts and went to live in Hawaii.

Q. And did Pittman & Roberts turn it over to still another person? A. No, they didn't. They just went out of business, Mr. Pittman associated himself with the Washington office of a New York firm.

Q. Did you suggest that Mr. Pittman continue with this matter? A. No, I did not.

Q. Did you, other than Messrs. Taylor and Roberts, did any accountant do any work on this matter? A. Yes, there was a Stovall and Company that Mr. Pittman had retained. They were in his building and he wanted them to prepare all the necessary figures that Mr. Pittman thought would be necessary for this renegotiation and tax case. I paid the bills for Mr. Stovall and Company.

364 Q. You say you paid the bills? A. I did.

Q. And did you see the work that they had prepared? A. I saw only a part of it.

Q. What did that consist of, I am talking about the Stovall work. A. Yes, I understand. They had large charts and they had broken down from my check books and from the diary which I kept of trips and so forth, all the possible figures that they could assemble to substantiate the expenses which we were going to claim.

Q. Now, had something happened to the records that you had delivered to Mr. Appel? A. Well, when Mr. Appel died, I was told by Mr. Payson that all the records of about twenty-odd clients had disappeared, that they couldn't establish them.

Q. And were your records amongst those? A. They were.

Q. And then was it necessary for you, in conjunction with the Stovall people, to reconstruct these records that had been delivered to Mr. Appel? A. That is correct.

365 Q. And what did you use to do this? A. Check books that I had and cancelled vouchers and this diary I referred to, and correspondence which indicated where I had been on particular dates.

Q. Well, had you done a substantial amount of traveling during this period of time? A. As a matter of fact, outside of Christmas, we worked every single solitary day in the year.

Q. And my question was, did you have to travel when you worked? A. We certainly did, we traveled all over the United States.

Q. And what were the places you went to? A. Well, we went to places like Rock Island, Illinois, Dayton, Ohio, the Boston Quartermaster, the Brooklyn Quartermaster, the Philadelphia Quartermaster, the Washington Quartermaster, where there were not only one agency but half a dozen agencies. There was one in Cincinnati, Ohio, we were constantly going to these research and development departments to seek out the things that fitted into these various factories.

Q. Did you go to the factories, too? A. Then we went from there to the factories.

Q. How many factories were there? A. Well, at one time there were as many as ten and it boiled down to eight.

366 Q. Were they all located in different cities, generally? A. Well, there was one in Long Island City, there were two in New York City, there were two in Worcester, Massachusetts, at one time there were three in Providence, Rhode Island; that is about the story on them.

Q. Now, after Mr. Pittman ceased working on the case, did you retain some other attorneys to assist you? A. I did.

Q. Who were they? A. Lowenstein, Pitcher, Amann & Parr of New York City.

Q. And who was the man in that firm who undertook to work on this matter for you? A. Mr. Douglas Amann.

Q. And did you see any of the work which had been accomplished by Pittman & Roberts, what had they done, as you recall it? A. Well, I saw all the work that I mentioned to you a few seconds ago.

Q. Had they filed a petition, do you recall that? A. Yes, they had.

Q. And then did you discuss this matter in detail with Mr. Amann? A. I did.

Q. And did he proceed to do some work in this matter?

A. He did.

367 Q. Prior to your going to Mr. Amann, had you from time to time received bills from Pittman & Roberts? A. I did.

Q. And do you recall how much the charge was that they made in connection with this matter? A. The sum total was in the neighborhood of between \$6,000 and \$6,500.

Q. Did you pay that bill? A. I did.

Q. Was there any litigation in connection with that bill?

A. None whatsoever.

Q. Did Stovall make a charge? A. He did.

Q. How much was that charge? A. A little over \$2,000.

Q. Was that paid? A. That was paid.

Q. Was there some discussion as to these bills between you and the Stovall firm? A. There was.

Q. What was the nature of that discussion? A. I was very perturbed at the length of time he was using to get together these figures. He was being paid at the rate of ten dollars an hour and he had already used up two hundred hours to establish a set of figures, and in one instance when I arrived in his office, the charts were on his desk and he and two other men were in the next office playing gin rummy and

368 I was being charged at the rate of ten dollars an hour and I objected to it strenuously.

Q. And what was the date that you retained Mr. Amann, the best you can recall? A. Well, I just can't -- I will have to refer to the --

Q. Well, how long a time, do you recall, had Pittman & Roberts been working on this matter? A. They worked on it from about 1948 to 1950 -- well, I would say 1951, I guess, something like that.

Q. Had it been brought to your attention anytime that Pittman & Roberts were negotiating settlement of this matter or attempting to settle this matter with the United States Government? A. Yes.

Q. Who brought that to your attention? A. Col. Taylor.

Q. What was said in that regard? A. Well, he told me that he had discussed this with the Justice Department and that he could secure this particular allowance for expenses, but they hadn't as yet arrived at a fee for services rendered.

Q. Did he advise you what the allowance for expenses was?

A. Yes, he told me that there would be approximately \$25,000 each, for each year 1943, 1944 and 1945.

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Q. As being your expenses in this? A. That is correct.

Q. Did he distinguish between that expenses being allowed on renegotiation and income tax? A. No, not at that time, he didn't.

THE COURT: This is the firm that had all of these records?

THE WITNESS: They had the original records.

BY MR. BERLOW:

Q. They were handling both the income tax matter and the renegotiation matter? A. Yes, it also included the renegotiation case.

Q. When you went to Mr. Amann, were the documents that had been prepared by Pittman & Roberts delivered to him? A. Yes, they were delivered to Douglas Amann, but previous to their being delivered, I brought Mr. Amann into Pittman & Roberts' office and introduced him to Mr. Pittman.

Q. Did they discuss the matter? A. They discussed the matter.

Q. And did Mr. Amann have the opportunity to obtain any information you requested? A. He did.

Q. From Pittman & Roberts? A. He did.

370 Q. Now, after Mr. Amann began to work on the matter, did you consult with him from time to time? A. I did.

Q. Did you provide him with any information in addition to that which Pittman & Roberts had? A. From time to time, when I could locate something, I did give it to him.

Q. Now, what was it, so far as you knew, that Mr. Amann did in this case? A. Well, Mr. Amann was a very meticulous lawyer, he went through the records with a fine comb and he negotiated, in summarizing in answering your question, he negotiated a deal with Mr. Prentice of the Justice Department in relation to expenses and he, in turn, also said we had not yet arrived at a conclusion as to services rendered. At the same time, he also made an exhaustive study of the Renegotiation Act as it applied to our partnership. That service cost me \$3,000.

Q. How do you know that? A. Because I received a bill for \$3,000 for that service rendered, independent of any other services.

Q. Was that bill paid? A. That bill was paid.

Q. Now, after Pittman & Roberts left, the Stovall firm had nothing further to do with the matter, either? A. Nothing at all.

Q. Did some other accountants come in to work with Mr. Amann?

371 A. No, they did most of the accountancy work themselves there, with the exception of seeking current annual information from Oppenheim, Appel, and so forth.

Q. Did there come a time when Mr. Amann advised you that a settlement proposal had been received from the United States Government? A. Yes, sir.

Q. Would you tell us what he told you in that regard? A. He told me that Mr. Prentice had agreed to allow approximately \$64,000 for expenses, but up to that time we hadn't as yet arrived at any service fee.

Q. Now, was it brought to your attention by Mr. Amann at any time that the Federal Bureau of Investigation was looking into this matter? A. He did.

Q. And would you tell us approximately when it was that he told you that? A. Well, that was just about the time when he was negotiating with Mr. Prentice.

Q. And did he tell you about the settlement offer after their investigation? A. He did.

Q. And did you, yourself, have anything to do with this investigation by the FBI? A. Nothing whatsoever.

372 Q. Did you provide them with any information that they requested? A. They spent three days in Mr. Amann's office, going through everything he had, and I told Mr. Amann to give them carte blanche to do it.

Q. Were you requested, while they were in Mr. Amann's office for three days, were you requested by the FBI in the office of Mr. Amann to provide the FBI with additional information other than that in the office? A. No, sir.

Q. Did they make any inquiry as to the transfer of securities or dividends to your sister, Mrs. Nass? A. I understood that there was an inquiry in Philadelphia regarding that and that Mrs. Nass gave the man all the information that he requested.

Q. Did you tell her to do so? A. Yes, of course.

Q. Did you provide them with information in that respect?
A. I didn't provide them with anything because Mr. Amann had all the information.

Q. And was that matter of the transfer of the securities brought to your attention after the FBI looked into it? A. Well, I was told by Mr. Amann that after they had been given all the facts, they just accepted it as such and I never heard from it further.

373 Q. And was it the expense items that the FBI was looking at, this expense information that you delivered to these attorneys?

A. I presume they were looking at every detail that had reference to my work.

Q. Now, when the offer of settlement was brought to your attention by Mr. Amann, did you discuss it with him in some detail?

A. Yes, I wanted to know what he thought about going to court on the renegotiation case first and he thought that in as much as their office had come up with the feeling that I was not subject to renegotiation, that it would be a good idea to try the renegotiation case and if we succeeded in that, that would close out everything with the exception of the tax; but if they did not succeed in doing it, they could always revert back to Mr. Prentice's proposal and take it up from that point.

Q. Did there come a time when you became dissatisfied with this Lowenstein firm or Mr. Amann or both of them? A. I was never dissatisfied with Mr. Amann.

Q. Did there come a time when you were dissatisfied with the firm? A. I was dissatisfied with Mr. Amann's senior partner.

Q. And did there come a time when you determined that you would sever your relationship with the firm? A. I did and for the
374 reason that after a period of about four years or so and they being on a daily basis, there never seemed to be any end to this thing, there was no daylight showing. That is when I decided I had enough.

Q. Now, at that time, when you decided you had enough, had you received any written communications from Mr. Amann in regard to the settlement proposal of Mr. Prentice? A. I did.

Q. Now, I show you this letter dated February 1, 1954 -- and I will first ask the clerk to mark it as Defendant's Exhibit No. 1.

THE CLERK: Defendant's Exhibit No. 1 marked for identification.

(Letter dated February 1, 1954, to Mr. Edell from Mr. Amann, with seven pages of computations, was marked Defendant's Exhibit No. 1 for identification.)

BY MR. BERLOW:

Q. I show you Defendant's Exhibit No. 1 for identification and I ask you if that is a letter, with various attached computations, which you received from Mr. Amann of the Lowenstein firm, about that date, which is February 1, 1954. A. It is.

Q. Now, I show you Plaintiff's Exhibit No. 3, and ask you if that is the same and if there are some items missing from it, I wish you would tell me. Is the letter which appears on the surface, the same?
A. Yes, sir.

375 Q. Is the next page the same or different? A. The next page seems to be different.

Q. There is added to that this one page, is that right?
A. That is right.

Q. Other than this page, the first page, are the rest of the pages the same? A. They are.

Q. So the second page in Defendant's Exhibit No. 1 for identification is the only difference between it and Plaintiff's Exhibit No. 3? A. It is.

Q. Now, thereafter, I show you Plaintiff's Exhibit No. 37, which is a letter dated March 8, and ask you if that is another letter which you received from Mr. Amann in reference to this matter?

A. It is.

Q. Now, before or after you received those letters, did you have any discussion with Mr. Amann in reference to their contents?

A. I did.

Q. Would you tell us what it was? A. Well, Mr. Amann at my request got up these particular figures that I wanted to know, because I was interested in the net results of what I could get -- what I had to
376 pay the Renegotiation Board and also the tax department, and at my request, he did that and mailed them to me.

Q. Now, first, which was the one which he mailed to you first, which did that have reference to? A. February 1, 1954, to the Mayflower Hotel in Washington, D.C., and that referred to the total renegotiation cost.

Q. Did he advise you as to what the total renegotiation cost would be? A. He says here \$137,526.60.

Q. Did you, after you received that letter, refer to that figure in a round way at any time? A. For a matter of convenience, we always discussed it as \$138,000.

Q. By "we," do you mean Mr. Amann -- A. Mr. Amann and myself.

Q. Did you and Mr. Brady and Mr. Casey discuss it in the round figure? A. We always discussed that figure as \$138,000 and no other figure.

Q. Did there come a time thereafter when Mr. Amann -- in his first letter which you referred to as renegotiation, he did say he would send you the tax calculation at some later time, do you see that in there, in the first paragraph? A. Yes, sir, I do.

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Q. Would you read that?

THE COURT: What is that Exhibit No., please.

MR. BERLOW: Defendant's Exhibit No. 1 for identification.

I am asking Mr. Edell to read the second sentence.

THE WITNESS: (Reading) "I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week."

BY MR. BERLOW:

Q. Did there come a time when you did receive the tax figures?

A. There was.

Q. And did you write another letter to Mr. Amann and ask him for them? A. I contacted him about ten days after this, in order to expedite it.

Q. Did he send you the letter in which he told you what the tax figures were? A. He did.

Q. And what were those figures? A. 1943, \$10,380.65; 1944, \$14,823.86; and 1945, \$15,960.32.

Q. What does it total up to, roughly? A. Approximately \$40,000.

Q. Did you understand what that dollar figure represented?

A. I did.

378 Q. That was explained to you? A. It was.

Q. By whom? A. By Mr. Amann.

Q. What does it represent? A. It represents the estimated tax liability that I would have to pay the tax department.

Q. Based upon what? A. Based upon Mr. Amann's analysis of the renegotiation settlement with Mr. Prentice.

Q. And did there come a time when you determined that you no longer wanted Mr. Amann to represent you, I think we went into that already. Did you then, after you made that determination, make some effort to get another lawyer? A. I wasn't really seeking another lawyer, I had enough lawyers.

Q. Well, did you discuss this matter with another lawyer?

A. No, sir, not with another lawyer. I discussed it with a friend of mine by the name of William J. McCormick.

* * * * *

379 Q. I don't want any conversation with Mr. McCormick, but after you spoke to Mr. McCormick, did you then have conversation with some lawyer who you understood was associated with Mr. William J. Casey, the plaintiff in this case? A. Well, I met Mr. Dickey.

Q. And did you have a conversation with Mr. Dickey in reference to this? A. I did.

Q. Would you tell us what was said? A. Mr. McCormick was in the same room with us, in Mr. Dickey's office, and Mr. McCormick had told Mr. Dickey in front of me that my friend, Mr. Edell, was invited up here by me to discuss this thing with you and he is under no obligations with you and you are under no obligations with him. He has a tax problem and a renegotiation problem, and Mr. Dickey was kind enough to sit down and talk with us about it.

Q. Did Mr. Dickey undertake to represent you in that matter?

A. No, Mr. Dickey said he could not represent me because it might be a conflict of interest in as much as he was doing work for the United States Government at the time, but -- I beg your pardon.

380 Q. Did he refer you to another lawyer? A. -- but he said there was a friend of his who was a tax expert, that he had a great deal of confidence in, that could handle the case, at least he would like to discuss it with him.

Q. Did he give you the name of this friend? A. He did.

Q. What was his name? A. Mr. William J. Casey.

Q. And did there come a time when you went and made arrangements to talk to Mr. Casey? A. Well, Mr. Dickey made the arrangements to bring Mr. Casey to Washington and we discussed the matter first in Mr. Dickey's office.

Q. You, Casey and Dickey? A. That is correct.

Q. Would you tell us what took place in the course of that -- first, tell us when the discussion was? A. Well, the discussion was about the early part of 1954.

Q. Would that be January or February of 1954? A. Sometime in that area.

Q. And it took place in Mr. Dickey's office and Mr. Casey and Mr. Dickey were present. Now, tell us what was said by the three people who were there. A. Well, Mr. Dickey introduced me, he didn't have very much to say after that. I told Mr. Casey that I was not interested in another lawyer per se, that because of the circumstances, I was interested in getting this case closed as quickly

381 as possible in as much as my work took me overseas and I had to get busy and go to California to negotiate projects with joint venturers and then go abroad for the purpose of negotiating them.

Q. What was the nature of the work you were doing at that time? A. At that time --

Q. Who were you working for, were you working for yourself? A. Yes, I was working for myself.

Q. Were you associated with any company? A. Yes.

Q. What was the company? A. Johnson International of Los Angeles, California.

Q. What was the nature of the work that they did? A. Well, they had, there was a very large pump company associated with them, that was the type of pump used for irrigation purposes in the desert areas of the United States or the world.

Q. Now, did Mr. Casey respond to your statement that you have just given us? A. He said he would be glad to discuss it with me.

Q. Was anything further said at that time? A. Yes, he said when do you expect to be in New York, and I told him such and such a time, and he said give me a buzz, and we will set up a meeting in my
382 office there, and that I proceeded to do.

Q. When was it that you called him and met him in his office?

A. That was about the early part of 1954.

Q. And what discussion took place there? A. Well, I told Mr. Casey then, just as I told him in Mr. Dickey's office, that I was thoroughly satisfied with Mr. Douglas Amann's work, he was an excellent lawyer and a perfect gentleman, but that the case had been in their office so long and that I had already spent close to \$15,000 in that office, that I simply had to get this case finished and that if he was prepared to handle this case individually and do all the leg work and get it done, I would be interested in discussing a fee with him.

Q. And did he indicate what type of fee arrangement --

A. Not at that time.

Q. Was that all that was said in his office at that time?

A. Approximately that.

Q. Did there come a time when Mr. Amann and Mr. Casey met in this case? A. Yes, there was.

Q. When was that? A. Oh, I would say that was sometime around, oh, possibly March or April of 1954.

383 Q. Now, you testified as to two meetings with Mr. Casey. Before Mr. Casey and Mr. Amann met, did you have any other meetings with Mr. Casey? A. Yes, Mr. Casey set up another meeting with me for a Saturday and he asked me if I would come to his home in Long Island to have lunch with him and we could spend the day talking about it at his home, and in as much as it was Saturday, he didn't feel like coming into town. I said I would be glad to do it. So I proceeded to his home in Long Island, where we spent a very nice afternoon.

Q. Did you discuss this case? A. In detail.

Q. What was it that you told him, did you make any reference to any matters that had transpired between you and Mr. Amann, what was it that you told him? A. I told Mr. Casey that there was a complete analysis of the renegotiation case in existence. I also told him that the Justice Department had made an offer to Mr. Prentice --

the Justice Department had made an offer to Mr. Amann for expenses of approximately \$64,000, that they had not arrived as yet upon services rendered, and that we were contemplating trying the renegotiation case in the court.

Q. Did there come a time when you delivered to Mr. Casey these two documents that you have before you, which have been marked as Plaintiff's Exhibit 37 and Defendant's Exhibit No. 1? A. Yes,
384 there was.

Q. Would you tell us when that was? A. I delivered those two to Mr. Casey in his office in New York City.

Q. The question was, when? A. I would say on or about, oh, May of 1954.

Q. And did Mr. Casey read those documents? A. He did.

Q. Did he read them in your presence? A. He did.

Q. Did you discuss them with him? A. I did.

Q. Tell us what the discussion was with reference to those documents? A. Well, I told Mr. Casey, I pointed out to him the important facts as far as I was concerned and that was the total renegotiation cost as evaluated by Douglas Amann's office and which included the expense amount that Mr. Prentice was willing to concede, the net cost was \$137,526.60, and that as far as the tax was concerned, that according to Mr. Amann's evaluation of the contemplated tax, based on this renegotiation, that was approximately \$40,000.

Q. And did Mr. Casey make any observation about that? A. No.

Q. Did you, after that meeting in May, did you then meet with
385 Mr. Amann and Mr. Casey at sometime? A. I did, -- they did.

Q. When did they meet together? A. I telephoned Mr. Amann and I said, Doug, I want to introduce Mr. Casey to you, who I think knows his way around Washington and I would like very much if you two would get together and you are under no obligations, it will not affect your case in one way or another, but I would like you two fellows to meet because I think that Mr. Casey can be of service to us.

Q. And did Mr. Amann agree to that? A. He did.

Q. And did you, Mr. Amann and Mr. Casey meet at someplace?

A. That first time, I did not meet with them, Mr. Casey went downtown and met with Mr. Amann in his office.

Q. And was that after Mr. Casey had examined Defendant's Exhibit No. 1 and Plaintiff's Exhibit No. 37? A. That is correct.

Q. And thereafter, did you and Casey and Amann all meet together in someplace? A. Yes, they both were going to be in Washington on a certain day and I invited them to have lunch with me at the Mayflower Hotel and the three of us met there and we had lunch and discussed the case.

386 Q. Were those documents, I just mentioned, discussed at that time? A. The figures were.

Q. And did Mr. Casey say anything about those figures?

A. Nothing beyond the fact that he knew they were in existence.

Q. And was the discussion between Mr. Casey -- was it a friendly discussion? A. Oh, very much so.

Q. Did there come a time when you advised Mr. Amann and his firm that you no longer wished them to represent you?

A. There was.

Q. And when was that? A. That was on or about the latter part of June, or the first part of July, it is right in that immediate area, 1954.

Q. Was there some question as to the amount of money which you owed the firm? A. Mr. Amann wrote me a letter telling me that there was a balance due of \$1,855 and some odd cents and if I would send him a check for that amount, he would send all the papers up to Mr. William J. Casey's office.

Q. Did you send the check to Mr. Amann? A. I did, immediately.

Q. And were the documents delivered? A. They were.

387 Q. And did you see this receipt, this three page receipt, was it brought to your attention that Mr. Casey had executed a receipt for all these documents? A. I know there was a receipt for them and Mr. Casey received all the papers.

Q. And after Mr. Casey received all the papers, did you discuss the matter with him again? A. Discuss the papers with Mr. Casey?

Q. Yes, did he indicate to you there was anything unsatisfactory or deficient about them? A. No.

Q. Now, after you made this payment to Mr. Amann, did you receive any further demands of payment from him? A. Yes, there was another demand for some incidental expenses.

Q. Did you pay that? A. I paid that.

Q. After that was paid, did you receive any demands for payment from Mr. Amann? A. None whatsoever.

Q. Have you received any to this day? A. None whatsoever.

Q. And to this day, you have received no further demands for payment from Pittman & Roberts or the Stovall Company, either?
A. None whatsoever.

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BY MR. BERLOW:

Q. Did there come a time, Mr. Edell, when you entered into certain discussions with Mr. Casey as to his compensation? A. There was.

Q. And do you recall when it was that that was discussed for the first time? A. I think the first time we discussed it was at his home out on Long Island.

Q. What was said in reference to the payment at that time? A. I told Mr. Casey that I wanted to -- if I made an agreement with Mr. Casey, it would have to be on a contingency basis because I was all fed up on the type of bills I had been getting for the previous seven years.

Q. And did you state at that time what the basis of the contingency was to be? A. Not at that time.

Q. Did there come a time after that when you did discuss it? A. There was.

Q. Did you state then what the basis was? A. There was and it was in his office.

389 Q. What was said at that time? A. We had discussed the entire matter by this time, we had both known exactly what we were thinking about. And I told Mr. Casey that I would give him 30% of any savings that he could establish in the renegotiation and tax cases based upon the \$138,000 renegotiation settlement that had been arrived at with the Justice Department and the 40-odd thousand dollar tax figure that had been established by Mr. Douglas Amann, plus the fact that I would give him \$2,500 as a retainer, which would be subtracted from any future moneys that he would receive in the effort to secure additional savings.

Q. And did he agree to that? A. He agreed to that.

Q. Were there any changes or any discussions in reference to that fee arrangement? A. Mr. Casey said he would draw up an agreement to that effect.

THE COURT: At this time, we will take the recess for the luncheon period. The recess will be until 1:45.

(The luncheon recess was taken from 12:30 to 1:45 p.m.)

* * * * *

390

BY MR. BERLOW:

Q. Mr. Edell, when we adjourned for lunch, I had asked you about a discussion that you had with Mr. Casey in reference to the fee arrangement. Now, did there come a time when the fee arrangement which you discussed with Mr. Casey was reduced to writing? A. Yes, sir.

Q. And where did that occur? A. In his office.

Q. Would you tell us when that was? A. July 15, 1954.

Q. And who prepared that fee agreement? A. Mr. Casey.

Q. Were you represented by any other counsel at that time?

A. No, sir.

Q. Did you read the agreement at that time? A. I did.

Q. And did you sign it? A. I did.

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Q. And was that fee arrangement in accordance with the understanding which you previously testified you had with Mr. Casey? A. It was.

Q. Did there come a time after that when you heard from Mr. Casey again in reference to the fee agreement? A. There was.

Q. And when was that? A. I would say he called me within about two or three days or thereabouts, that he wanted to see me.

Q. And did he tell you what he wanted to see you about? A. He told me that the agreement that he had written on that date would have to be changed as far as the verbiage was concerned, because of the fact that the Committee on Practices of the Treasury Department would not look with favor upon the way it was written, and so forth, but that the terms and conditions of it would remain the same.

Q. And did there come a time when you went to his office in reference to this matter? A. There was.

Q. And when was that? A. July 28, 1954.

Q. Now, prior to that time, had you paid Mr. Amann? A. There was.

392 Q. And I show you this check dated July 23, 1954 -- which I will ask the clerk to mark as Defendant's Exhibit No. 2.

THE CLERK: Defendant's Exhibit No. 2 marked for identification.

(Check dated July 23, 1954 to Lowenstein, etc. for \$1,855, signed by Harry Edell was marked Defendant's Exhibit No. 2 for identification.)

BY MR. BERLOW:

Q. I ask you if this check is the check representing payment to the Lowenstein firm? A. It is.

Q. And was that payment in full? A. It is.

Q. What was the date of that payment? A. July 23, 1954.

Q. Now, when you returned to Mr. Casey's office on July 28, at that time, to your knowledge, had the Lowenstein firm delivered all of the documents to Mr. Casey? A. They had.

Q. And did he indicate to you that they were in his office, by he, I mean Casey? A. That is correct, sir.

Q. Now, at that time, what was the situation insofar as your personal assets were concerned? A. They had all been tied up by the Treasury Department and they were in escrow at the American

393 Security and Trust Company in Washington, D. C.

Q. Did that represent all or substantially all of the money that you had? A. It did.

Q. And for how long a time had that been the situation? A. Well, it had been tied up there by the Treasury Department on or about the time that Mr. -- I believe when Mr. Amann got into the case.

Q. Was that escrow agreement worked out by Casey or Mr. Amann? A. Mr. Amann.

Q. In addition to that, were you aware at that time that the interest was running on whatever this indebtedness was determined

to be? A. Oh, definitely so, it amounted to about \$100 a week.

Q. And did you need these assets in your business that you were engaged in at that time? A. I certainly did.

Q. When you went to Mr. Casey's office on July 28, did you bring anything with you, any documents with you? Did you bring the agreement?

MR. DICKEY: Just a minute, he has asked a question, Your Honor, I object to his leading him, he said did he bring anything with him.

* * * * *

394 THE COURT: Very well, the answer will be stricken.

BY MR. BERLOW:

Q. An agreement had been prepared between you and Mr. Casey on the 15th, had it not? A. That is correct.

Q. And you had executed that agreement? A. That is correct.

Q. And Mr. Casey called you and advised you that that agreement had to be changed? A. That is correct.

Q. And when you went to his office, did you bring that agreement, the original agreement, with you? A. That is correct.

Q. Did you discuss that with Mr. Casey? A. I did.

Q. Did he repeat to you what he told you over the telephone?
A. He did.

395 Q. What was it he said then? A. He said that the verbiage in that agreement had to be changed due to the fact that the Committee on Practices would not look with favor upon the way it was written, but that the substance of it, the terms and conditions of it would remain the same and that we both would understand that.

Q. Did you deliver the original agreement to him? A. I did.

Q. And did you observe what was done with it? A. I did.

Q. What was done with it? A. He destroyed both, his original and mine.

Q. Have you seen the original agreement since? A. I have not.

Q. What else was done then? A. Then he wrote this new agreement dated July 28, 1954.

Q. Was the agreement broken into two agreements? A. It was.

Q. Now, at the time, on this July 28th, was there a figure used in the renegotiation agreement? A. There was.

Q. What figure was that? A. \$138,000.

Q. And I show you Plaintiff's Exhibit No. 5, which is dated July 28, and ask you if that is the agreement which you did sign on July 28? A. Yes, sir, that is it.

396

Q. And inserted in there was \$138,000? A. That is correct.

Q. And did you have any discussion at that time with Mr. Casey as to what the \$138,000 represented? A. No, it wasn't necessary, we both knew what it represented.

Q. And had you discussed it previously? A. We had.

Q. What did it represent? A. It represented the sum total that I would have to pay the Renegotiation Board as a result of the allowances made by Mr. Prentice.

Q. Did there come a time, after July 28, when you heard from Mr. Casey for the second time in reference to the necessity for changing the now two agreements that you had entered into? A. Yes, there was a time.

Q. When did that occur? A. That was either August 6 or August 8.

Q. And what was it that Mr. Casey said? A. He had to write another agreement and that is what it was.

Q. Did you agree to that? A. I did.

397

Q. Did he explain to you why he had to change it? A. Yes, he did.

Q. What did he say? A. He said let's revert back to our original conversation, you understand and I understand that our original agreement of July 15 is the one that we are going by, I have to write these agreements as they come forth to satisfy the Committee on Practices.

Q. Now, on July 28, had you paid Mr. Casey anything? A. I did.

Q. How much did you pay him at that time? A. \$1,000.

MR. BERLOW: I will show you, when the clerk is finished, a check dated July 28, 1954, which I will ask the clerk to mark as Defendant's Exhibit No. 3.

THE CLERK: Defendant's Exhibit No. 3 marked for identification.

(Check dated July 28, 1954, to Mr. Casey, for \$1,000, signed by Harry Edell, was marked Defendant's Exhibit No. 3 for identification.)

BY MR. BERLOW:

Q. I show you this check which has been marked as Defendant's Exhibit No. 3 and ask you if this is the payment that you made to Mr. Casey on July 28, 1954? A. That is correct.

* * * * *

398 Q. And thereafter, did you make additional payments to him so that the total payment in cash was \$2,500? A. I did.

THE CLERK: Defendant's Exhibit No. 4 marked for identification. Defendant's Exhibit No. 5 marked for identification.

(Check dated September 1, 1954, to Mr. Casey for \$1,000, signed by Harry Edell, was marked Defendant's Exhibit No. 4 for identification.)

(Check dated October 1, 1954, to Mr. Casey, for \$500, signed by Harry Edell, was marked Defendant's Exhibit No. 5 for identification.)

BY MR. BERLOW:

Q. I show you Defendant's Exhibit No. 4 and ask you if this is the second payment that you made to Mr. Casey on the retainer fee? A. It is.

Q. I show you Defendant's Exhibit No. 5 and I ask you if that is the third and last payment you made in reference to the retainer fee?

A. That is correct.

399 Q. And thereafter, as the case progressed, until it was completed, did Mr. Casey make any other requests for payments from you in reference to a fee? A. No, sir.

Q. Now, after this agreement was entered into, did there come a time when Mr. Casey or Mr. Brady commenced to discuss the case itself with you? A. There was.

* * * * *

400 Q. Other than the statement which you received from Mr. Casey in connection with the tax and renegotiation matter, have you ever received any bills or statements from Mr. Casey? A. No, sir.

Q. Did there come a time when you received a statement from -- some communications from Mr. Casey in reference to disbursements that had been made? A. Yes, sir.

Q. Now, from time to time did you pay any of the expenses that were incurred in the litigation of this matter? A. I did.

* * * * *

407 BY MR. BERLOW:

Q. Mr. Edell, after the agreement of August 6 was executed by you and Mr. Casey, the letter, did there come a time in that month when you discussed with Mr. Casey still another agreement which he wanted you to sign? A. Yes, sir.

* * * * *

408 THE CLERK: Defendant's Exhibit No. 8 marked for identification.

(Letter dated August 17, 1954, to Mr. Edell from Mr. Casey, was marked Defendant's Exhibit No. 8 for identification.)

409 BY MR. BERLOW:

Q. I show you this document which is a letter agreement dated August 17, 1954, which has been marked as Defendant's Exhibit No. 8 for identification and ask you to read that and ask you if that signature on the bottom is yours? A. It is.

Q. Calling your attention specifically to the Arabic No. 2 of that agreement which says:

"It is understood" --

This is signed by Mr. Casey, a letter to you, and it says:

"It is understood that I am not authorized to make any final settlement without your explicit approval."

Now, did you discuss that paragraph with Mr. Casey prior to the time that you signed that agreement? A. I did.

Q. Would you tell us what was said by you and what was said by Mr. Casey? A. I told him --

MR.DICKEY: Again, Your Honor, I would object to this entire line of questioning, it is not an issue in this case. We are not suing for any fee under this agreement.

* * * * *

411 THE COURT: Very well, it is admitted, the second paragraph.
(Paragraph No. 2 of Defendant's Exhibit No. 8 was received in evidence.)

BY MR. BERLOW:

Q. Then, Mr. Edell, do you recall there being a last agreement that Mr. Casey had you sign in reference to interest? A. That is correct.

Q. And that was dated long after all these matters that we are discussing? A. That is correct.

Q. And did you sign that agreement? A. I did.

* * * * *

412 Q. Now, did there come a time, Mr. Edell, when you discussed with Mr. Casey this matter of the proof of the expenses which you had incurred in the course of your earning the income which was the subject of this tax controversy? A. I don't quite understand the question.

Q. Did you discuss with Mr. Casey the matter of the expenses which were to be deducted in the renegotiation and in the income tax matter? A. Yes.

Q. Would you tell us what the discussions were? A. Well, Mr. Casey had already received a great deal of data from Mr. Amann and he, I understood, was going to evaluate that --

413 Q. The expenses that were to be deducted in the renegotiation case, from that income, and the travel expenses and stenographic expenses, all the expenses that would be used as deductions in the renegotiation and the tax case? A. Well, the expenses in the renegotiation case that were to be deducted were in relation to Mr. Prentice's allowances --

MR. DICKEY: Your Honor, again the question is not answered.

THE COURT: The objection is sustained. You are not answering the question, sir.

BY MR. BERLOW:

Q. In talking about this matter to Mr. Casey, did you ever use the word "expenses" when you talked to him? A. Yes, of course.

414 Q. Then, I will have to go on to another question. In the course of your employment during this war work, did you incur certain expenses? A. I did.

Q. And would you just briefly tell us, were they travel expenses? A. They were travel expenses, hotel expenses, entertainment expenses, various kinds of other expenses that were incidental expenses.

Q. Did Mr. Casey ever ask you about these things? A. He did.

Q. Did Mr. Brady ever ask you about these things? A. He did.

Q. Now, did you discuss it with them in relation to any documents or evidence that you have as to the existence of these expenses? A. I did.

Q. What did you say to them about it? A. I said you can find a great deal of verification of these expenses in my check books and check stubs and my diary, which indicates the travel, and from the letters that were transmitted between the various agencies and factories and myself.

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"It is understood" --

This is signed by Mr. Casey, a letter to you, and it says:

"It is understood that I am not authorized to make any final settlement without your explicit approval."

Now, did you discuss that paragraph with Mr. Casey prior to the time that you signed that agreement? A. I did.

Q. Would you tell us what was said by you and what was said by Mr. Casey? A. I told him --

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* * * * *

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Q. Did you discuss with Mr. Casey the matter of the expenses which were to be deducted in the renegotiation and in the income tax matter? A. Yes.

Q. Would you tell us what the discussions were? A. Well, Mr. Casey had already received a great deal of data from Mr. Amann and he, I understood, was going to evaluate that --

* * * * *

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* * * * *

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Q. Did Mr. Brady ever ask you about these things? A. He did.

Q. Now, did you discuss it with them in relation to any documents or evidence that you have as to the existence of these expenses? A. I did.

Q. What did you say to them about it? A. I said you can find a great deal of verification of these expenses in my check books and check stubs and my diary, which indicates the travel, and from the letters that were transmitted between the various agencies and factories and myself.

Q. And in the course of these discussions, did they say to you they were doing some work in reference to these expenses? A. They did.

415 Q. And was it brought to your attention, prior to this time, that the FBI had examined these expense records? A. It was.

Q. Did there come a time when Mr. Casey or Mr. Brady, either one, mentioned to you that this matter of expenses had become the subject of some discussion with a Mr. Prentice of the Department of Justice? A. That is correct.

Q. And what was told to you by them in that regard? A. Mr. Casey informed me in July of 1956 that Mr. Prentice had agreed to allow approximately \$25,000 a year for three years for expenses, but that they had not reached a point on the service fees and that he was going down the next week with Mr. Brady to discuss it again with them.

Q. Did they indicate they had discussed this expense matter with Mr. Prentice, from time to time, thereafter? A. They had.

Q. And prior to the trial which took place in Washington, was it ever brought to your attention that the expenses that were to be agreed upon was less than \$60,000 or \$64,000? A. At no time.

Q. What was the smallest figure, insofar as expenses were concerned, that was stated to you that the government was considering? A. \$64,000.

Q. Had you seen that figure previously? A. I had.

416 Q. Where? A. In the arrangement that Mr. Amann had prepared.

Q. Did there come a time in the course of the trial when this matter of the expenses was brought to your attention again, in the course of the trial before Judge Harron? A. The only time that I heard anything in relation to expenses was the end of the first day, when I heard the word stipulation mentioned by Mr. Casey.

Q. And to whom was he talking at that time? A. To Judge Harron.

Q. Did he address his remarks to you? A. Not at all.

Q. Previously, at any time, in any hotel room, had he ever discussed the matter of expenses with you? A. No, sir.

Q. Had he ever mentioned to you that there was to be a stipulation as to \$14,000 a year being the expenses? A. No, sir.

Q. Did you ever consent to such a stipulation? A. I did not.

Q. Did there come a time after the trial when you inquired of Mr. Casey as to whether or not such an agreement had been made? A. I did.

417 Q. And when was that? A. At the end of the second day, when the trial was over, Mr. Casey and Mr. Brady went into the chambers of Judge Harron with the other attorneys and they were in there about an hour. And when they came out, it was around five o'clock, I said, what was that stipulation that you entered into? And he said, I will let you know tomorrow, I have got to catch a train for Pittsburg, and he rushed right by me with Mr. Brady. I thought I could catch him over at the Raleigh Hotel and I went over there looking for him and I was told by the room clerk that both of them had checked out in the morning.

Q. So, did you attempt to communicate with them thereafter? A. I did, the next day I telephoned the New York office and Mr. Casey was out of town, but I couldn't get Mr. Brady on the phone for several days, and I tried it.

Q. Did you finally get him on the phone and ask him as to this stipulation? A. I did and he said he would send me a complete breakdown on the whole thing.

Q. Did there come a time when it was sent to you? A. Yes, I received it.

Q. In what form was it? A. In the form of a brief.

Q. A brief that had been filed? A. That is correct.

418 Q. After you received the brief, at that time were you aware of what had been settled insofar as the expenses were concerned? A. Would you repeat that?

Q. When you received the brief and read it, was it apparent to you what the settlement had been, as far as the expenses were concerned? A. Yes, it was.

Q. What month and what year was that? A. August of the same year of the trial.

Q. Prior to that time, had anybody ever discussed the stipulation with you? A. No, sir.

Q. Now, after you received the brief, did you call either Mr. Brady or Mr. Casey and make an inquiry as to this stipulation? A. I did, I called Mr. Brady on the phone and I distinctly heard the operator say, "Mr. Edell is calling you from Washington," and then she called back and -- she spoke back to me and said he is not in.

Q. Did there come a time when you were able to speak to either one of them about it? A. Well, yes, it was quite sometime later, though. I went to San Francisco and Los Angeles immediately after that.

419 Q. When you spoke to them about it, who was it you spoke to, Mr. Casey or Mr. Brady? A. No, I didn't get Mr. Casey, I got Mr. Brady.

Q. And you had an opportunity to discuss it with him. A. I did.

Q. And what did you say to him and what did he say to you in reference to that stipulation? A. Well, I was furious about the thing in as much as we had been offered \$75,000 or \$64,000 as a minimum. I was furious at the fact that they had stipulated \$14,000 a year.

Q. Did you say that to Mr. Casey? A. I told that to Mr. Brady, I couldn't find Mr. Casey.

Q. What did Mr. Brady say about that? A. He said we expect to make it up in the Tax Court.

Q. Then, did there come a time when you discussed it with Mr. Casey, as well? A. Yes.

Q. And what did he say? A. The same thing that Mr. Brady said, that was the best way he could get out of the deal.

Q. At any time, had a copy of that stipulation been exhibited to you to read? A. No, sir.

Q. Had anybody asked you ever to sign the stipulation, as you had been requested to sign six agreements prior to that time? A. No, sir.

420 Q. You have seen those various letter agreements that have just been exhibited to you? A. Yes.

Q. Did you ever see the stipulation and were requested to sign the stipulation in the same manner you signed those other agreements? A. No, sir.

Q. Now, did there come a time when you were advised that the renegotiation matter was to be tried in Washington? A. Yes.

Q. And before that, was it to be tried in some other place? A. In New York City.

Q. Did you appear in New York City? A. I did, it was on a Monday morning.

Q. Was Mr. Casey there? A. No, sir.

Q. Who was there? A. Mr. Brady was there.

Q. And what occurred at that time? A. Well, Mr. Brady told me that Mr. Casey had developed a nervous breakdown and that he was going to ask the Judge for a continuance. And I said, well, I saw Mr. Casey only yesterday in the Biltmore Hotel and he was on his way to Wilmington, Delaware, with that gentleman that he introduced
421 me to. I said, when did he develop this nervous breakdown? And he shrugged his shoulders. And I said, by the way, if this case is coming up today and Judge Harron has come to New York for this case, where are your witnesses?

Q. What did Mr. Brady say to that? A. He shrugged his shoulders, he said, "I don't know."

Q. Were any witnesses there at that time? A. Not one.

Q. Did the government have any witnesses? A. They did.

Q. Was testimony taken? A. Yes, sir, there was testimony taken.

Q. And was there any cross-examination by your counsel?

A. No, sir.

Q. What time did the taking of the testimony close? A. About 12 o'clock.

Q. Thereafter, was the case reset for trial in Washington at some other time? A. Judge Harron continued it for one week from that date in Washington.

* * * * *

425 BY MR. BERLOW:

Q. Was it ever brought to your attention at any time that Mr. Casey had done any work on the income tax matter? A. No, sir, he never did any work to my knowledge on it.

Q. With whom were your discussions with reference to the income tax? A. Always with Mr. Brady.

Q. Did Mr. Casey discuss the matter with you at all? A. Yes, one day when I was in his office, I said, "Bill, why don't you go downtown
426 and interview these agents downtown instead of sending Brady, he is too young and inexperienced for this job." And Mr. Casey said, "He is doing all right."

Q. In reference to the income tax matter, after the renegotiation matter was disposed of, did you have any discussion with Mr. Brady as to the expenses to be applied as a deduction from the income tax to be charged against you? A. No, I didn't have very much of any discussion relative to that.

Q. Was it at some time brought to your attention by Mr. Brady as to what the expenses ultimately were?

* * * * *

427 Q. Well, Mr. Edell, did there come a time when you, before this income tax matter was determined, when you hired another attorney to work on the matter? A. Yes.

Q. What was his name? A. Laurens Williams.

Q. And what brought that about? A. Well, the fact remained that I was completely discouraged and disgusted with the way the case had been handled in Washington, my experiences with both these men in

relation to witnesses, et cetera, and I had no faith in the fact that Mr. Brady could be my representative before the Internal Revenue anymore than he was down in Washington on the renegotiation thing.

THE COURT: Just a minute. Who handled the renegotiation matter at the trial?

THE WITNESS: Mr. Casey and Mr. Brady.

THE COURT: Go ahead, Mr. Berlow.

BY MR. BERLOW:

Q. But the income tax matter so far as you know, Mr. Casey, had nothing to do with that? A. That is correct.

Q. And then you brought in Mr. Williams? A. That is correct.

428 Q. And did you discuss this matter with Mr. Williams in the presence of Mr. Brady or Mr. Casey at any time? A. I introduced Mr. Williams to them in their office by appointment.

Q. And what was said between the group of you at that time?

A. I told Mr. Casey that I would appreciate it very much if he would permit Mr. Williams to assist in this Internal Revenue matter.

Q. And did he do that? A. He did.

Q. And did Mr. Casey agree to that? A. He did.

Q. Now, did there come a time, was it ever brought to your attention that Mr. Casey or Mr. Brady had done any work in reference to the years 1945 — 1946 and 1947? A. They had done no work on that at all.

Q. Did you ever inquire of them if or when they would do some work on that? A. I did.

Q. And what was their answer to you? A. They said, we have nothing to do with '46 and '47, you have taken on Laurens Williams.

Q. Did you indicate to them that their contract required them to do that work? A. I did.

429 Q. What did they reply? A. They didn't reply anything except that they weren't responsible for it.

Q. Did you then retain Mr. Williams to do that? A. I did, that was part of Mr. Williams' agreement, to overlook the entire Internal Revenue thing and supervise it.

Q. Other than Mr. Williams, to your knowledge, did any other attorney do any work in reference to '46 and '47 income tax? A. No, sir.

Q. Was it at some time brought to your attention as to what the expenses were which were accepted by the United States Government in the Internal Revenue matter? A. Yes, sir.

Q. And what was that amount? A. \$14,000 for the year.

Q. Who brought that to your attention? A. Mr. Williams.

Q. And did he state to you how that figure was arrived at? A. He did.

Q. What did he say? A. He said that the stipulation in the renegotiation matter of \$14,000 just killed me and that Mr. Korr wouldn't listen to any other figure.

Q. And after that, Mr. Williams did go on and complete '46 and '47?

430 A. That is correct.

* * * * *

431 Q. Now, did there come a time when you received a letter from Mr. Brady — Mr. Casey, excuse me, advising you that you owed him some money on the renegotiation matter? A. There did.

MR. BERLOW: Excuse me, Your Honor:

Q. I show you this bill of October 7, 1957, which the clerk will now mark as Defendant's Exhibit No. 9.

THE CLERK: Defendant's Exhibit No. 9 marked for identification.
(Bill dated October 7, 1957, to Mr. Edell from Hall,
Casey & Robinson, for \$10,903.50, was marked
Defendant's Exhibit No. 9 for identification.)

MR. DICKEY: May we see it?

(The exhibit was handed to Mr. Dickey.)

MR. DICKEY: Thank you, Mr. Berlow.

BY MR. BERLOW:

Q. I ask you if this is a bill which you received from Mr. Casey for the renegotiation matter on that day? A. Yes, sir.

Q. Now, what is the amount of that bill? A. \$10,903.50.

432 Q. Now, after you received it, did you enter into a discussion with Mr. Casey in reference to it? A. Yes, I did.

Q. What was said by you and what was said by him? A. I told him that his job wasn't finished, that our agreement called for him handling both the renegotiation and the Internal Revenue or the income tax affair and that we will wait until the complete contract had been completed before we settled the sums that were due him, if any.

Q. What did he say to that? A. He said it was all right to do so.

Q. Did he say that was in accordance with your agreement? A. He did.

Q. And was it sometime thereafter that you did receive a final bill from him? A. Yes, sir.

THE COURT: Now, by this time, you knew what the figure was for the expenses, didn't you?

THE WITNESS: The allowance?

THE COURT: Yes.

THE WITNESS: Yes.

* * * * *

433

BY MR. BERLOW:

Q. By this time, on October 7th, did you know the fact that a stipulation had been entered into in the Tax Court settling the amount of the expenses, had you received the government brief? A. Yes, I did.

Q. And had you mentioned that to Mr. Casey? A. I did.

Q. And at this time, did Mr. Casey have all of your income tax records? A. He did.

Q. And you had paid him the retainer in full, had you not? A. That is correct.

Q. And after you were advised or it was brought to your attention that this stipulation had been entered into in the Tax Court without your consent, how long after that, was it, that you retained Mr. Williams to help you in this matter? A. I believe that was in '56.

Q. Was it shortly after that, that you got Mr. Williams to help you? A. I believe it was in '56, I don't remember the exact date. It might have been the end of '56 or the beginning of '57, I am not sure which it was.

434

Q. Did there come a time when Mr. Casey rendered a final bill to you? A. Yes, sir.

Q. And that was in the form of a letter dated February 18, 1959 --

MR. BERLOW: I would appreciate your marking it.

THE CLERK: Defendant's Exhibit No. 10 marked for identification.

(Letter dated February 18, 1959, to Mr. Edell from Mr. Casey, was marked Defendant's Exhibit No. 10 for identification.)

BY MR. BERLOW:

Q. I show you this letter dated February 18, 1959 and ask you if that letter was sent to you by Mr. Casey? A. Yes, sir.

Q. And did you read that letter at that time? A. I did.

Q. And did that letter represent -- what is the total fee charged there? A. Well, the total fee including the disbursements was \$19,535.76, less retainer of \$2,500, making a net amount due of \$17,035.76.

Q. After you received that and read it, did you conclude that that charge was or was not in accordance with the understanding that you had entered into? A. It was not.

* * * * *

435

BY MR. BERLOW:

Q. And did you pay that? A. I did not.

Q. And did you discuss it with Mr. Casey and Mr. Brady at that time or thereafter? A. I don't think I did.

THE COURT: When was it that you got the bill?

THE WITNESS: You are referring to this?

THE COURT: Yes.

THE WITNESS: February 18, 1959, is the date.

MR. BERLOW: Would you mark this as an exhibit?

THE CLERK: Defendant's Exhibit No. 11 marked for identification.

(Letter dated May 25, 1956, to Mr. Edell, unsigned, on stationery of Mr. Casey, was marked Defendant's Exhibit No. 11 for identification.)

BY MR. BERLOW:

Q. I show you this letter from Mr. Casey to yourself, dated May 25, 1956, and ask you to read that and tell us --

MR. DICKEY: May we see it?

MR. BERLOW: May 25th -- (conferring with Mr. Dickey).

THE COURT: What is the year, Mr. Berlow?

MR. BERLOW: May 25, 1956.

* * * * *

436

BY MR. BERLOW:

Q. I am showing you Defendant's Exhibit 11 for identification and ask you if you can identify that as a letter which is written to you by Mr. Casey? A. It is not signed by Mr. Casey, but his letters are on the left hand corner, typed letters.

* * * * *

Q. Now, this letter which has been marked as Defendant's Exhibit No. 11 for identification, says:

"I am enclosing a copy, which breaks the stipulated net profits down by years."

Were the enclosures actually enclosed in that letter? A. No, sir.

437 Q. Did you receive -- prior to your receiving that letter from Mr. Casey, had you asked him for the stipulation in reference to the expenses? A. I did.

Q. And did he say he would send it to you? A. That is correct.

Q. But despite the letter referring to certain enclosures, they were not in there? A. They were not in there.

Q. I will show you another letter, dated May 29th, and after you have identified it, I will show it to other counsel.

THE CLERK: Defendant's Exhibit 12 marked for identification.

(Letter dated May 29, 1956, to Mr. Edell from Mr. Brady, was marked Defendant's Exhibit No. 12 for identification.)

BY MR. BERLOW:

Q. I show you this letter dated May 29, 1956, in which he says he encloses a new draft with all documents, and ask you if you did receive that letter? A. I did.

Q. Was there a stipulation in there? A. No, sir.

Q. Was there a supplementary stipulation, such as this, which had nothing to do with expenses? A. That is correct.

438 Q. After that, did you call Mr. Casey and ask him again for the stipulation as to expenses? A. I tried to get Mr. Casey, but I managed to get Mr. Brady and told him about it.

Q. Did he finally send it to you? A. I didn't receive it at all until much later.

* * * * *

THE COURT: Admitted, that will be Defendant's 10, 11, 12, and also 9.

(Defendant's Exhibits Nos. 9, 10, 11 and 12 were received in evidence.)

MR. BERLOW: I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. DICKEY:

Q. Mr. Edell, with regard to the stipulation of \$14,000 in expenses, your testimony is that you never saw it or heard of it prior to sometime subsequent to the settlement -- to the judgment of the court, is that correct? A. I never heard of it prior or after that, for sometime.

439 Q. I believe you testified that Mr. Brady appeared in New York for you, in the absence of Mr. Casey who was ill at the time? A. That is correct.

Q. Now, the preceding weekend -- that was on a Monday, was it not, when he appeared for you? A. That is correct.

Q. Now, during the preceding weekend, had you seen Mr. Casey? A. Yes, sir.

Q. Had you been with him on Friday? A. Yes.

Q. Had you been with him on Saturday? A. Yes.

Q. Had you been with him on Sunday morning? A. That is correct.

Q. And did he advise you on Sunday morning that he had to go to Wilmington, Delaware, on other business and would return in time for the case? A. He only told me that when the gentleman arrived that he introduced me to, and then he informed me that he had to leave for Wilmington.

Q. Had you spent a considerable amount of time with him on Saturday? A. I believe that was the day we interviewed Mr. Cordes

440 or Mr. Porter, one or the other.

Q. My question was, had you spent a number of hours with him on Saturday? A. I would say we spent quite some time.

Q. Now, on the following Monday, Mr. Brady appeared in court and announced that Mr. Casey was ill, is that correct? A. That is correct.

Q. And were you present in the court? A. I was.

Q. At all times? A. At all times.

Q. I believe you testified that certain testimony was taken in court? A. That is correct.

MR. DICKEY: I would ask Your Honor to take judicial notice of the official report of proceedings before the Tax Court of May 1, 1956, pages 1 to 28, certified to by the then reporter, Mr. Leon Zuck, a reporter pro tem of the Tax Court.

Would you like to see this?

MR. BERLOW: Is there any specific part you have in mind?

MR. DICKEY: I would like judicial notice taken of the entire testimony.

(The transcript was handed to Mr. Berlow.)

BY MR. DICKEY:

441 Q. Mr. Edell, do you recall at that session of the Tax Court that Mr. Brady objected to any witness being put on by the government, and the Court put the witness over, a Mr. Dupuy, a former agent of the FBI? A. That is correct.

Q. So that your testimony here today that there was testimony before the Court on that day is not entirely accurate, is it, sir? A. I wouldn't say so. The fact that he just objected, isn't very much.

Q. Well, the Court halted any testimony concerning Mr. Dupuy, did it not? A. No, not at all, the gentleman testified he was an agent, he had come all the way from Miami, Florida, and Judge Harron decided that inasmuch as he had made that long trip that he should be heard and he was heard.

Q. All right, sir. Mr. Edell, would you look at page 20 of that transcript and look at the bottom of it, where it starts with Mr. Brady? A. Yes.

Q. And Mr. Brady there objected to the continuing of the examination of Mr. Dupuy, did he not? A. Yes.

Q. And did the Court up-hold that objection? A. I don't think so.

* * * * *

442 A. (Reading transcript) What was your question?

Q. My question is: Was not the testimony of Mr. Dupuy halted and Judge Harron stated that he would have to appear in Washington and testify there, where he would be allowed to be cross-examined by Mr. Casey? A. I don't see that mentioned right there.

Q. All right, sir, let me see if I can find it. A. I wish you would.

Q. Reading from page 23 of the transcript:

"THE COURT: Now, Mr. Leathers, " --

Mr. Leathers was government counsel in the case, wasn't he? A. That is correct.

Q. (Reading:)

"THE COURT: Now, Mr. Leathers, isn't one of your reasons for wanting to call this witness out-of-order, to save the Government the expense of bringing him here from Florida?

"MR. LEATHERS: That is correct.

"THE COURT: Well, that ground is not sufficient ground for calling this witness out-of-order. The case can't be tried this week because of the illness of Mr. Casey. Those things happen and as far as the Court knows, this is a bona fide situation, Mr. Casey is actually ill. His witnesses have been inconvenienced and he has incurred expenses.

443 Your witness is inconvenienced and you have incurred expenses, but there is an objection to the testimony of this witness.

"The testimony is in the nature of rebuttal testimony admittedly. As I understand it, Mr. Casey is in charge of the trial of this case, isn't that correct?"

Going over to the top of page 24:

"MR. BRADY: That's correct, Your Honor.

"THE COURT: Mr. Casey is not here to cross-examine this witness or to state more fully the objection to conversations with the deceased person, which Mr. Brady indicates is objectionable and hearsay.

"The Court believes that it is inadvisable under all of these circumstances to hear this witness out of order. The lawyer who is representing the Petitioners, who is in charge of the trial of this case is not here. And the Court certainly should not hear a witness when we know at the outset that the attorney in charge of the case is going to object to his testimony on the grounds of its inadmissibility.

"I am very sorry, Mr. Leathers and Mr. Dupuy, that we can't proceed in this fashion. I thought yesterday when the matter was brought up that it would be possible to hear this witness out of order, or he could have been excused yesterday; but yesterday when the matter of

444 going ahead with this case was presented to the Court, the Court was not told that Petitioner's counsel would object to the testimony of this witness. If I had known that yesterday, I probably would have told you that we wouldn't hear the witness out-of-order and he would have been let go yesterday.

"Mr. Dupuy, I do not know at this time whether this case will be heard in New York or in Washington. Since we can't hear you out-of-order and if you are a necessary witness, your availability might have something to do with the date on which this case can be heard. I think the trial of this case is supposed to take about one day, ..."

A little further down on page 25:

"THE COURT: No ruling is made on the objection at this time. The witness is excused. When he appears again, we will have him sworn again because he hasn't given any testimony."

A. Well, that took four or five pages of your reading, as far as I am concerned, there was a great deal of discussion about it.

Q. So your recollection, however, as to his testifying, is incorrect? A. It isn't my recollection that is incorrect, it is the fact that the man was there and came all the way, and Mr. Casey

445 wasn't there to protect me in the matter.

Q. But he didn't testify, did he? A. Well, not according to that, but the man was there, they discussed it for nearly an hour.

MR. DICKEY: Would the Court take judicial notice of this transcript?

THE COURT: Yes.

BY MR. DICKEY:

Q. Now, also, at the beginning of the session in New York, was there not, in your presence, a discussion of a stipulation with regard to expenses? A. I don't recall that.

Q. You listened rather carefully to what went on in this case, didn't you? A. I usually do.

Q. This was a very important matter to you, wasn't it? A. Right.

Q. And yet you don't recall that, at the beginning of this, Mr. Leathers discussed that a stipulation had been entered into? A. I don't recall its being mentioned there. It might have been, but I don't recall it.

MR. DICKEY: May I have that again?

(The transcript was handed to Mr. Dickey.)

MR. DICKEY: The Court indulge me for a moment, while I find this?

* * * * *

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BY MR. DICKEY:

Q. Look, Mr. Edell, at the bottom of page nine and running over to the top of page ten, read it to yourself and see if that refreshes your recollection. A. (Reading transcript) This reference is purely to the fact that a stipulation had been covered, but it doesn't specify what the stipulation was, nor any amount, on this particular page, anyhow.

Q. May I read it to your sir? See if I am quoting correctly:

"However, since the stipulation which has been covered -- which has been executed covers a, some of the accounting data which will later be important and since the parties have also reached agreement as to the amount of expenses which will be allowable in the absence of records showing the expenses, it seemed important to proceed at this time with that much of the case."

Do you recall that language, sir? A. I don't recall the language.

Q. Do you recall that there was a discussion at that time that there had been an agreement reached as to the expenses which would be allowable? A. As far as I was concerned, there was no stipulation for \$14,000 that was ever mentioned to me.

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Q. That wasn't my question, sir. My question was: At the hearing in New York, do you recall that there was a discussion in open court, at which you were one of those in attendance, at which the statement was made that there has been an agreement of expenses which will be allowed? A. I don't recall any such thing being made, that I heard.

Q. As a matter of fact, on Friday and Saturday, had you gone over a stipulation with Mr. Casey with regard to the expense? A. No.

Q. The preceding Friday and Saturday? A. No, not a definite stipulation of any amount like that.

Q. Had he informed you that he would find it most difficult to support the expenses or any expenses which you were claiming? A. He stated that.

Q. And had he also told you, either at that time or prior thereto, that once the \$183,000 offer was turned down, all component parts of that offer -- none of the component parts of that offer were available to you? A. What is your question?

Q. Well, I thought that I phrased it accurately, let me state it again. Had he advised you, either the preceding Friday, Saturday and Sunday morning, prior to the original date this hearing was set for,

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or prior to that time, that once you rejected the \$183,000 offer which the Department of Justice made on the renegotiation, that no component parts of that offer were available to you? A. I don't recall his mentioning that to me at all. I do know that he had the advantages of discussions with Mr. Amann in relation to the stipulation of expenses that Mr. Prentice had agreed upon, and I also know that he had discussed expenses with Mr. Prentice personally in Washington, and had notified me to the effect that there would be approximately \$75,000 worth of expenses permitted.

Q. Well, as a matter of fact, you testified that Mr. Taylor of Pittman & Roberts, some three or four years before, had also told you there would be \$25,000 a year? A. That is correct.

Q. And then weren't you rather disappointed when Mr. Amann only came up with \$60,000 or \$64,000? A. No, I wasn't disappointed because that is a perfectly reasonable thing to do, to finally get down to \$64,000 from \$75,000 and it was an approximate amount, it was never settled as such.

Q. Now, Mr. Amann -- getting to the tax phase of this matter -- Mr. Amann had advised you, had he not, that it might well be that Internal Revenue would not take any of the settlement figures with the Department of Justice? A. That was in his letter.

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Q. So that whatever had been done by way of the Department of Justice figure might not necessarily be accepted by Internal Revenue? A. He stated something to that effect in his letter.

Q. You understood that, didn't you? A. Yes, I did.

Q. And Mr. Amann's letter and calculation of the taxes that he said would be due, was explicitly based on the expense offer or the estimated expenses in Mr. Prentice's letter and he said that this was simply hypothetical, didn't he? A. He didn't say it was hypothetical, he mentioned the approximate \$40,000 tax that would be due in the Tax Court, subject to Mr. Prentice's allowances.

Q. Not in the Tax Court? A. In the Internal Revenue.

Q. Yes. A. That is what I meant.

Q. You have trouble mixing these up, from time to time?

A. I have had a lot of trouble over the years.

Q. Yes. Now, in 1959, Mr. Casey wrote you several letters asking to be paid, did he not? A. I just saw one that Mr. Berlow handed me, there might be another one.

MR. DICKEY: May I have Exhibits 21 and 22, please.

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BY MR. DICKEY:

Q. He sent you a bill in February, did he not? A. I would like to see it.

MR. DICKEY: May I have Defendant's Exhibit 9, I believe, Defendant's Exhibit 9 or 10.

BY MR. DICKEY:

Q. Referring to Defendant's Exhibit 9, on October 7, 1957, he billed you for the renegotiation case, is that correct? A. That is correct.

Q. And that was a bill in the amount of \$9,900 plus \$1,003.50 for expenses? A. That is correct.

Q. It states on the bottom that:

"This firm retains \$2,500 which was received and reported as a retainer for the settlement of tax deficiencies."

In part, that is what it says, does it not? A. May I see it?

Q. Yes, sir (handing exhibit to the witness). A. That is correct.

Q. And you suggested to him that the whole matter be settled at one time and he was agreeable to that? A. I didn't suggest that, I suggested that he abide by our original agreement which he had originally written and which took in both the renegotiation and the tax settlement, and they were both part and parcel of the same thing and they had to be

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figured together to come to a net result.

Q. One was 30% of the savings, and the other was 30% of the savings below the tax assessment deficiency, was it not? A. That was not our agreement of July 15, 1954.

Q. That is the one you say was executed and all copies were torn up? A. That is the one that was executed by Mr. Casey in his

office and subsequently torn up by him.

Q. In your presence? A. In my presence.

Q. And your copy was also torn up? A. I gave him my copy and it was torn up in my presence.

Q. And then there was an agreement of July 28 executed? A. That is correct.

Q. And those constituted two separate agreements, one originally calling for \$138,000 on the renegotiation as the figure, is that right?

A. The July 15th mentioned \$138,000.

Q. I am talking now about July 28, sir. A. July 28 also mentioned \$138,000.

Q. Now, with regard to the July 28 agreement on taxes, does that call for 30% of the savings below the deficiency assessed? A. It does.

Q. For the years '43, '44, '45, '46 and '47? A. It does.

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THE COURT: Does that have a number on it, please?

MR. DICKEY: That is Plaintiff's Exhibit 6, Your Honor.

BY MR. DICKEY:

Q. By the way, Mr. Edell, was there ever a deficiency assessed for '46 and '47? A. There was a mistake that was made by the Internal Revenue in duplicating a tax in both '45 and '46; in other words, I had been taxed twice and Mr. Laurens Williams discovered that and he had it corrected.

Q. Now, would you answer my question as to whether there was ever any deficiency assessed for '46 and '47? A. I don't recall any deficiency as such, there might have been, I don't know, I was out of the country a great deal.

Q. But you do recall there was a deficiency assessed for '43, '44 and '45? A. Yes.

Q. Now, with regard to the renegotiation, I show you Plaintiff's Exhibit No. 5 dated July 28, 1954, that has in it the figure \$138,000, does it not? A. It does.

Q. What does the language say right preceding the figure?

A. (Reading:)

453 "I hereby stipulate and agree that you may retain, as and for your compensation, thirty percent (30%) of the difference between the Justice Department offer of One Hundred Thirty-eight Thousand Dollars (\$138,000) and the final settlement of the dispute. It is understood that your compensation is limited to the amount stipulated in this agreement."

Q. That is right. Now, the Department of Justice offer by Mr. Prentice was \$183,000, was it not, sir? A. That is not the approach that I took to it and the approach that Mr. Amann gave to me and the approach that I gave to Mr. Casey.

Q. Let me ask you this question, sir: In the Department of Justice communication, the one by Mr. Prentice, was there any figure other than \$183,000 shown? A. I don't recall seeing the original thing from Mr. Prentice.

Q. What has been marked in evidence as Plaintiff's Exhibit No. 27, is that the settlement proposal by J. H. Prentice? A. It states so.

Q. He is the gentleman from the United States Department of Justice? A. That is correct.

Q. And what is the total figure shown on that, sir? A. \$114,000. Is that the figure you are referring to?

Q. No, sir, I am referring to the -- A. This figure here that you pointed to, the excess profit, \$12,000.

454 Q. And \$57,000 for the next year? A. That is correct.

Q. That is \$69,000, and \$114,000 for '45? A. That is correct.

Q. That is \$183,000? A. That is correct.

Q. On the Department of Justice offer, there is no \$137,000 or \$137,562.60 figure, is there, sir? A. That wasn't my agreement with Mr. Casey.

Q. Just answer my question, sir, is there any -- A. No, sir.

Q. All right. Does the agreement of July 28, 1954, Plaintiff's Exhibit 5, the one that has the \$138,000 figure in it, say anything

about Mr. Amann's calculations as to what net amount would be due?

A. No, it does not.

Q. It does, however, refer to the Department of Justice? A. It does.

Q. Thank you, sir. Now, Mr. Edell, with regard to the August 6, 1954, agreement, Plaintiff's Exhibit No. 9, that refers to \$183,000 as the Department of Justice offer, does it not? A. It does.

Q. In addition, on August 6, 1954, Plaintiff's Exhibit 7, Mr. Casey sent you a letter, did he not? A. Yes, sir.

455 Q. Did you ever receive that letter? A. I imagine I did, I would say yes, it was addressed to me there.

Q. And in the face of that letter and the new agreement, you signed the \$183,000 agreement? A. That is correct.

Q. Mr. Edell, on February 18, 1959, what has been identified as Defendant's Exhibit No. 10, was sent to you, was it not? A. Yes, sir.

Q. I believe you said you never acknowledged that? A. That is correct.

Q. On March 31, 1959, what has been identified as Plaintiff's Exhibit No. 22, starting out saying: "We haven't heard a whisper from you about paying your bill," was sent to you, was it not? A. That is correct.

Q. Did you ever acknowledge that? A. I did not.

MR. DICKEY: Will the clerk please mark this.

THE CLERK: Plaintiff's Exhibit No. 39 marked for identification.

(Handwritten letter dated April 4, 1959, to Mr. Casey from Mr. Edell, was marked Plaintiff's Exhibit No. 39 for identification.)

* * * * *

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November 27, 1962
Washington, D. C.

* * * * *

459

HARRY E. EDELL

the witness on the stand at the time of the adjournment of Court on November 26, resumed the stand, was reminded he was still under oath, was examined and testified further as follows:

CROSS EXAMINATION

BY MR. DICKEY:

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Q. Mr. Edell, when we recessed yesterday I had handed you, I had marked for identification, I don't know whether I had handed it to you yet or not, Plaintiff's Exhibit 39 for identification.

Would you look at that Sir? Is that letter in your handwriting dated April 4th, 1959? A. It is.

Q. Did you write that letter? A. I did.

* * * * *

Q. Referring, Mr. Edell, to Plaintiff's Exhibit 39 for identification, is there anywhere in this letter that you make any complaint with respect to the services rendered by Mr. Casey? A. None whatsoever. It only refers to my conditions, at the time due to the death of two members of my family.

MR. DICKEY: I would like to move the admission of Plaintiff's Exhibit 39 into evidence.

THE COURT: It may be admitted.

* * * * *

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[BY MR. DICKEY:]

Q. Mr. Edell, you said that this referred only to your health and that of your family, I believe, or that of your family.

There is a sentence in here, is there not, This notice is to assure you that I have not intended to ignore your letters.

Do you recall saying that in there? A. That is correct.

Q. And those letters were letters from Mr. Casey inquiring about his fee? Is that correct? A. It could be. If that was the letter you were referring to.

Q. Were they the letters you were referring to? A. I presume they were.

Q. I see. Mr. Edell, I hand you a carbon copy of a letter addressed to Mr. Harry E. Edell, unsigned, but bearing the dictating initials of WJC dated April 9, 1959, identified as Plaintiff's Exhibit 40 for identification.

Did you see the original of that letter, Sir? A. I imag[ine] I did get it.

Q. Did you ever reply to that? A. I don't recall doing so.

462 MR. DICKEY: I move the admission of Plaintiff's 40 for identification.

THE COURT: Admitted.

(Plaintiff's Exhibit 40 admitted in evidence).

[BY MR. DICKEY:]

Q. On the date of April 9, 1959 which is the date of Plaintiff's Exhibit 40 did you ever contact Mr. Casey or Mr. Brady or anyone else in his office, with respect to the payment of the fees which they claimed you owed? A. I did.

Q. When was that? A. It was following my arrival in Washington subsequent to that. I called Mr. Casey on the phone. He wasn't in. I got Mr. Brady and I told him I was back in town and that I completely disagreed with his bill inasmuch as I didn't feel he ever earned one cent more from me than what the original contract called for.

Q. I see. You never wrote him to that effect? A. I did not.

Q. When was that call, Mr. Edell? A. Following my arrival in Washington after that.

Q. Well that was April 9, 1959, or was it May, June, or July?

A. I don't exactly know what date, but it was subsequent to this letter.

* * * * *

463 Q. Mr. Edell, I hand you what has been identified as Plaintiff's Exhibit, and is in evidence as Plaintiff's Exhibit 21, being a letter of May 14, 1959, did you ever see that letter, Sir? The original of that letter?
A. I did.

Q. Was it subsequent to May 14th that you called Mr. Casey's office and being unable to talk to Mr. Casey you talked to Mr. Brady?

A. I told Mr. Casey.

MR. DICKEY: Just answer one question first please.

THE WITNESS: It was subsequent to that letter.

Q. [By Mr. Dickey] I see. Go ahead you told Mr. Casey or Mr. Brady --? A. I told Mr. Brady.

Q. Oh, what did you tell Mr. Brady? A. I told Mr. Brady that the next time I got into New York, I would make an effort to drop in and discuss it with him.

Q. Did you do that? A. I did not because I had been advised that I did not owe them anything.

464 Q. Who advised you of that? A. Counsel.

Q. Who? A. Mr. Williams.

Q. Mr. Laurence Williams? A. Yes.

Q. Now are you changing your testimony Mr. Edell, that you called Mr. Brady and told him you didn't owe him anything or were you simply advised by Mr. Williams and thus did nothing? A. Oh no, I called Mr. Brady and told him that first.

Q. When did you call him? A. Subsequent to May.

Q. Subsequent to the letter of May 14th? A. April or May.

Q. Let us get the chronological order. After getting the letter of May you consulted with counsel, is that correct? A. It wasn't a case of consulting counsel. Mr. Williams and I were very close friends, we saw each other almost three or four nights a week as friends.

When I discussed this with him and told him the circumstances and he also admitted that the contract of July the 15th had not been carried out properly.

Q. Had he ever seen the contract of July 15th that you claim?

465 A. No Sir, that had been destroyed by Mr. Casey.

Q. Then how did he know? A. Because I told him what the contents were.

Q. Oh I see. So from the contract which you allege was drawn up

in Mr. Casey's office, Mr. Williams gave you an opinion under that contract that you didn't owe him anything? A. That had been discussed with Mr. Williams for months and months.

Q. Just answer the question. A. That is correct.

Q. Did you ever give Mr. Williams a written resume of that contract? A. Yes he had seen many of the papers.

Q. Just answer the question, Mr. Edell. A. Yes, I had.

Q. Did you ever give him a written resume of the alleged contract of July 15th? A. No, Sir.

Q. Now subsequent to May, after having consulted with Mr. Williams, or was this because of previous consultation that you called Mr. Brady and told him you weren't going to pay anything in May? A. It was the result of the conversations I had had with Mr. Williams.

466 Q. Mr. Williams hadn't expressly advised you that you owed him nothing or to tell him that, but you just made up your mind from the conversations you had with Mr. Williams that you didn't owe Mr. Casey anything and you had advised Mr. Brady of that? A. That is not the fact.

Q. What is the fact then? A. The fact was, Mr. Williams told me in his opinion that Mr. Casey had breached the contract, and under those conditions he didn't think I owed him anything.

Q. When you called Mr. Brady, did you tell him that? A. Not all of that. I merely told him the conclusion.

Q. You didn't tell him Mr. Williams was of this opinion? A. No, I did not.

Q. That was the conclusion you had arrived at as far as your conversations with Mr. Brady were concerned? A. With Mr. Williams. You said Mr. Brady.

Q. No, I said this was your conclusion as far as your conversation with Mr. Brady was concerned when you talked to Mr. Brady you advised him it was your conclusion, you had concluded you didn't owe him any money? A. I told that to Mr. Brady.

Q. Now Mr. Edell, do you recall the taking of your oral testimony prior to this trial in my office on June 23, 1960? A. Yes, Sir.

467 Q. Referring to page 17 of your deposition Sir, -- Just a minute --
do you need some water? A. No, I have some right here.

Q. Were you asked the following questions and did you reply thereto? A. Which questions are you referring to?

Q. By the 14th of May, beginning with the second question on the top of that page, by the 14th of May you hadn't been in New York, is that correct? Answer: I don't recall that far back whether I was or wasn't. Question: Were you in New York at all during the balance of 1959? Answer: I must have, because I went up there I presume. I don't know exactly what part of '59.

Did you ever make any effort to get in touch with Mr. Casey or Mr. Brady? Answer: No, I had Mr. Williams to take care of all my affairs from that point on.

Q. Were you asked those questions and did you make those answers? A. I did at that time.

Q. And are you now testifying differently from that time? A. I can refresh my memory, the same as Mr. Casey did when he testified.

Q. In other words, you are now saying your present recollection is better than your recollection in 1960? Is that correct? A. As to
468 that point, it is.

Q. That is what I mean, as to that point. A. That is correct.

Q. What has refreshed your recollection between 1960 and today? A. A review of all my papers.

Q. Did you make a memorandum of your telephone conversation with Mr. Brady? A. No, I did not.

Q. That wouldn't help refresh your recollection about that conversation? A. No, just refreshing the memory of my itineraries.

Q. What particularly with respect to your itineraries refreshed your recollection as to a telephone conversation, Mr. Edell? A. The simple fact that I had gone to New York. I knew I had called up Casey and he wasn't in and I asked for Brady and I told Brady just exactly what I mentioned a few minutes ago.

Q. But you didn't recall this in 1960, two years ago? A. No, I didn't at that moment.

469 Q. Now Mr. Edell, I believe you testified that subsequent to the first hearing of this case, in the renegotiation case in New York, that you proceeded to the New England states and secured certain witnesses? Is that right? A. That is correct.

Q. And did you know as a matter of fact those witnesses were in New York the preceding week end? A. They told me when I was in Worcester, when I said they told me, Mr. Jack Owen and Mr. Joe Hern.

Q. Just a minute. Would you answer my question first and then we will get into the next question.

Did you not know as a matter of fact they were in New York that preceding week end? A. As far as I knew, they weren't at the trial.

Q. That still isn't my question. Did you not as a matter of fact know they were in New York the preceding weekend. A. To the best of my knowledge they were not in New York.

Q. All right. I see. I hand you Plaintiff's Exhibit 32, a letter addressed to you of November 21, 1955, a copy of a letter, unsigned, but with the dictating initials EJB.

Did you receive that letter? A. That is correct.

Q. You did receive it? A. That is correct. What was that date, if I may ask?

470 Q. November 21, 1955. A. Right.

Q. And that letter states in pertinent part, I have just returned to the office after being out of town for about a week, and I decided to write you a few things that took place on my trip to Worcester. Joe Hern and Jack Ownes, are very fine gentlemen, and they gave me their time very willingly, both have high regard for the work you performed for the company, and both are willing to testify on your behalf.

I obtained a breakdown from Jack Ownes concerning the amount of renegotiation business which the company did during the years 1943 and 1945, and the amount of non-renegotiation which the company did during this period and then it goes on and says other things.

Now are you stating when you went to see these gentlemen after the meeting in New York, after the first hearing in New York in May 1956, approximately six months later, that Mr. Hern and Mr. Owen said they never talked to Mr. Brady? A. They never mentioned a visit to me.

Q. That isn't my question. My question is very plain. Are you stating that Mr. Hern and Mr. Owen stated they had never talked to Mr. Brady? A. They never mentioned to me that Mr. Brady had been there.

471 Q. Did you ask them? A. No, I did not.

Q. Then you are not stating in this Court today that Mr. Brady did not talk to Mr. Owens or Mr. Hern? A. I am not stating that was never mentioned.

Q. No, just answer my question. A. That is correct, but no where in that letter does it refer to any of the other witnesses.

Q. Well, let us talk about some of the other witnesses. Did you see Mr. Paletino? A. I did.

Q. On the same trip? A. I did.

Q. And on that trip did he tell you that Mr. Brady had never seen him? A. Mr. Paletino had never heard that name at all. He might have been there but Mr. Paletino didn't recognize the name of Brady.

Q. In other words, you asked him specifically, did you see Mr. Brady? A. No, I did not.

Q. Oh, I see. Then how do you know he never heard the name of Brady? A. Because I asked him if anybody had written to him in re-

472 lation to coming to New York as a witness.

Q. What did he tell you? A. He said I don't recall any contacts from anybody from that office.

Q. From what office? A. From this office of Casey and Brady.

Q. Then you did mention Mr. Brady's name to him. A. The office of Brady and Casey.

Q. Did you also visit with Mr. West on this trip at Long Island City? A. No, Mr. West was out in Long Island. I didn't visit with him.

Q. Again, however, Mr. Edell you are not meaning to testify that Mr. Brady testified falsely when he said he spoke with Mr. Paletino at

his place of business, are you? A. It isn't a question of his veracity, it is a question of what actually happened.

Q. Will you answer my question, Sir, instead of giving me a lecture. You are not testifying here today that Mr. Paletino told you that he never saw Mr. Brady? A. Mr. Paletino didn't tell me that he did or didn't see Mr. Brady. He told me that he had never heard from Mr. Brady.

Q. You never asked him specifically whether he saw Mr. Brady?

473 A. I asked him whether he had heard from an office of William J. Casey and Brady.

Q. You didn't ask that of Mr. Owens and Mr. Hern you just asked that of Mr. Paletino? A. That is right. Because Mr. Brady had told me in New York that Mr. Paletino was somewhere in New York at the time on Monday morning but he didn't know where he was.

Q. Now, I believe Mr. Edell that you testified that you first secured Mr. Williams' service in this case in 1956, to the best of your recollection? Or, perhaps 1957? Is that correct? A. That is right.

Q. Do you recall what part of the year it was? A. Well I had been discussing this with Mr. Williams for months because we lived together at the University Club and as far as the actual employment of him is concerned, I believe it was some time in the early part of 1957.

It might have been the latter part of 1956, I don't know. There is a record of that some place.

Q. When did you first take him to see Mr. Casey or Mr. Brady?

A. Immediately after he had decided to take on the problems for me.

Q. Incidentally, did he take them on for you as a lawyer or simply

474 as an advisor and as your alter ego? A. He was supposed to advise me as an alter ego. And advise me as to what proceedings to accept and decline because I had become completely confused with the manner in which Mr. Casey was handling that case.

THE COURT: Mr. Edell, after this renegotiation matter was finished, you were presented a bill by Mr. Casey, were you not?

THE WITNESS: Yes, Ma'am.

THE COURT: And you did tell him that you wanted to wait until the income tax matters were finished before taking up the matter of this bill for renegotiation?

THE WITNESS: Yes, Ma'am.

THE COURT: Well, if you felt Mr. Casey, that you didn't owe Mr. Casey anything, why did you not tell him so after he had finished the renegotiation matter and had sent you a bill?

THE WITNESS: For the simple reason that our original agreement was a combination of two services.

THE COURT: I know, you said that. At the same time why did you not tell him then, I don't owe you anything?

THE WITNESS: Because he had mentioned the fact that they were going to try to make up the deficit of the renegotiation in the Tax Court, that they expected to get a much larger allowance for expenses.

475 THE COURT: But you knew that he expected you to pay him for the renegotiation, and why didn't you tell him then that you didn't owe him anything for this renegotiation matter?

THE WITNESS: Well, I didn't think the contract had been completed at that moment, the original contract.

THE COURT: No, I do not want to ask anything more.

THE WITNESS: Excuse me.

THE COURT: Go ahead, Mr. Dickey.

MR. DICKEY: Thank you, Your Honor.

[BY MR. DICKEY:]

Q. Mr. Edell, were you present at all times in the Court Room in the Tax Court proceeding in Washington? A. Are you referring to the renegotiation?

Q. That is the only one that was in the Tax Court. A. I get confused occasionally.

Q. Renegotiation, yes Sir? A. Yes.

Q. Were you present when the case was called on the opening day of the trial in Washington? A. Yes, Sir.

Q. Were you sitting at counsel table or were you sitting back in

the audience, or where were you sitting, Sir? A. First, I sat in the audience, and then I walked up and sat at the counsel table next to Mr. Brady.

476 Q. Mr. Edell there has been introduced in evidence the transcript, I believe, as Plaintiff's 16a, b and c. Pointing to 16a, would you turn to page 21 of the exhibit please, Sir? At that page mid-way down the page, do you see colloquy between the Court and Mr. Leathers who was Government counsel? A. I do.

* * * * *

A. Are you going to start up here please so I can get the continuity of it?

Q. Yes, Sir. The Court: It was handled orally? Mr. Leathers at that time of the first hearing, Mr. Casey, it is reflected in the supplementary hearing.

The Court: Do you mean in New York the other day? Mr. Leathers: In New York. It is page 17 of the transcript. The Court: You have received your copy? Mr. Leathers: Yes, I have. The Court: I suppose it has not been taken up in Court? Mr. Leathers: So that the record will be perfectly clear -- The Court interrupting, let me see, you say you stipulated something about expenses of \$16,000? Mr. Leathers: \$14,000 each year, a total of \$42,000.

Do you see that there? A. Yes, I do.

477 Q. Did you hear it when it took place? A. I did not. I only heard a stipulation had been made. I didn't hear the figures in reference to the \$42,000.

Q. You didn't hear the figures of \$42,000 or \$16,000? A. I knew a stipulation had been entered into but I didn't know what it was.

Q. Mr. Edell, do you recall at the end of the hearing that the Court called you back as a witness itself and questioned you when you were on the stand? A. Yes, I do.

Q. Referring to 16c, which is the transcript of May 11, 1956, would you be good enough to turn to page 495 of that transcript?

Do you see as far down just below the middle of the page on 495 where the witness, which was you, answered: American Security and Trust Company, Washington, D.C.? A. I do.

Q. Well there then ensued for the balance of that page and the balance of page 496 and down to just below the middle of the page of 497 colloquy between the court and counsel? Is that correct? A. I see that.

478 Q. Do you see at the bottom of the page 497, Mr. Leathers: We have stipulated the expenses which are attributable to at a rate of \$14,000 a year.

Do you see that? A. I do.

Q. You were present when that statement was made were you not? A. That period of the thinking, yes.

Q. Did you hear it then? A. Yes, I heard it at the very end.

Q. I see. A. That was at the very end of the trial.

Q. Right. Haven't you testified here that you never heard of that figure before? A. No, Sir, I never did.

* * * * *

Q. So you are now telling us that the first time you ever heard the \$14,000 figure was just as it has been read now? A. At the very end of the trial.

479 Q. Did you at any time ever write to Mr. Casey challenging his authority to stipulate \$14,000 a year, and tell him he had no right to do this? A. I had an agreement with him that he mustn't make any definitive agreements without me. There was a letter in effect on record. As a matter of fact, an agreement.

Q. By that, by your testimony right now, do you mean the letter of August 17, 1944, which is in evidence as Defendant's Exhibit 8?

A. That confirmed -- this second paragraph confirmed our oral agreement and that was put into writing as it was stipulated right here.

Q. You say you had an oral agreement of what date, Sir? A. The original agreement was made on July 15th and then we incorporated it into that.

Q. Does this Defendant's Exhibit 8 refer to any matter other than the refund claim for the \$7,500? A. The refund claim I had nothing to do with this at all. The refund claim had nothing to do with Mr. Casey's ethics in any way, shape, or form, and the second paragraph is in relation to all matters pertaining to my renegotiation, and it was not, and he was not to make any agreements without my final authorization.

Q. But the explicit language contained in Defendant's 8 is contained in no agreement you had with Mr. Casey except that, is it? A. To the best of my knowledge that is the firm and final one we incorporated.

480 Q. And it is only in that particular letter? A. That is correct.

Q. Now Mr. Edell, do you recall what was the best offer you had ever had to settle the renegotiation case, that is the amount of the excessive profits which the Department of Justice said were owing? The gross amount? A. The best offer that I had was incorporated in Mr. Amann's agreement.

* * * * *

Q. Mr. Amann was not a Government official? A. No.

Q. So what was the best offer you had from the Government official as to the amounts of profit in excessive profits? A. I didn't discuss it with a Government official.

Q. Didn't you see the letter from Mr. Prentice? A. Yes.

Q. Wasn't it for \$183,000? A. That is correct.

Q. Wasn't the judgment of the Tax Court for a total of \$150,000?

481 A. I am not too sure of those figures. When it got into the Tax Court, I am not too sure of those figures.

Q. Do you mean, Mr. Edell, that you do not know that the Tax Court rendered a decision for \$150,000 even as you sit there now?

A. I presume they did. I have never been in the Tax Court. You are referring to the real tax court, not the renegotiation?

Q. No, I am referring to the renegotiation of the tax court. They were in the Tax Court on the renegotiation? A. That is correct.

Q. And did you not know in the renegotiation in the Tax Court the Court rendered a verdict of \$150,000 as being excessive profits? A. I

believe that is correct now that you have explained the difference between the courts.

Q. It is the same court, Mr. Edell, it just handles different matters.

Had any of your other counsel ever gotten a better figure of \$183,000?

A. I think that was the figure that Mr. Pittman and Roberts came down with, and I think it is the one Mr. Amann came down with.

Q. \$183,000? A. I believe that is correct.

482 Q. And after the trial the verdict was \$150,000, and wouldn't you say that was an improvement of \$33,000? A. On services rendered.

Q. On total. A. On services rendered.

Q. On everything that was the amount of the judgment of the Court, was it not, as to the excessive profits which you had to repay? A. Yes, but that is not my interpretation. My interpretation is that I did not accept the amount of expenses that had been offered to us by Mr. Prentice and upon which my July 15th agreement with him was arranged.

That was my agreement with Mr. Casey, that he had to better the \$138,000 cost. I was only interested in dollar cost, if Mr. Casey couldn't better that; I didn't need Mr. Casey at all.

And \$138,000 is what I was to pay and that is the only thing that made any sense to me. All other details didn't mean anything.

And also the \$40,000 that Mr. Amann had evaluated would cost me in the Tax Court. Those were the two principle things my agreement with Mr. Casey was. All other things were superfluous to me.

483 Q. Did you ever have an agreement with Mr. Casey referring to any evaluation that Mr. Amann had made of your position?

A. That was in our July 15th agreement.

Q. The one that was torn up? A. That is correct.

Q. In other words on July 15th you entered into an agreement, that is to say it is on the basis of the Amann calculation? A. There was nothing else to go by.

Q. Well, wasn't the letter from Mr. Prentice available at that time? A. The agreement with the letter --

Q. Just answer the question. A. I don't understand which letter you are referring to.

Q. All right. I will show it to you.

Referring to Plaintiff's Exhibit 27 dated 4/21/54 headed Settlement Proposed by J. B. Prentice, December 16, 1953. That was in existence when you discussed this matter with Mr. Casey and allegedly made a fee agreement on July 15th, wasn't it? A. That is correct. It must have been by the dates here.

Q. And that totals \$183,000 doesn't it Sir? A. That does. I presume, I didn't go through that.

484 Q. Let us go through it -- \$1,257 and \$114,000 that is \$183,000.

A. That is absolutely correct. But that wasn't what my agreement with Mr. Casey was.

Q. This agreement was on the basis of what Mr. Amann had to say, is that what you are saying now? A. My agreement was on the basis of dollars to be saved as incorporated in the proposal by Mr. Prentice to Mr. Amann. That was my agreement with Mr. Casey.

Q. Now in July 1954 there was a deficiency assessed against you as far as the Internal Revenue was concerned, wasn't there? A. I don't recall it. I may have been out of the country at that time. And I am not familiar with all these volumes of papers.

Q. Didn't you know as of that date there was a \$175,000 assessed against you as a deficiency? A. That was the tax court decision, I presume, yes.

Q. That wasn't the tax court deficiency, that was the Internal Revenue deficiency, the examining agent? A. Yes.

Q. Right? A. I presume so.

485 Q. Now on March the 8th, Mr. Amann wrote you a letter which has been identified as Plaintiff's Exhibit 37, is that correct? A. That is correct.

Q. And it is that letter which you say is the basis of the agreement on the savings in your income tax matter? A. This letter is the basis upon which Mr. Casey and I agreed to save dollars for me and in this it

specified approximately \$40,000 would be my cost in the tax court after the renegotiation.

In other words \$138,000 in the renegotiation court and \$40,000 in the tax court.

Now upon this and only these two instruments that have been mentioned, that was all our agreement entered into. If it wasn't for these two instruments I would have nothing else to work with.

Q. You had the deficiency from the Internal Revenue to work with, didn't you? A. I don't understand those things. I employ counsel and CPAs to work those things out for me.

Q. And you had Mr. Prentice's letter of \$183,000 to work that out?
A. Yes, Sir.

Q. Now, Mr. Edell, would you look at the third paragraph of Plaintiff's Exhibit 37, the letter of March 8, 1954, and read it to yourself, Sir?

486

A. I read it.

Q. Am I properly paraphrasing it to say, of course I don't know whether the Internal Revenue Service will accept these proposed expenditures, these estimated expenditures that the Justice Department had estimated? Is that properly paraphrased? A. That is correct.

Q. Do you mean to testify then that a lawyer would make an agreement based on hypothetical figures, that is Mr. Casey? A. This wasn't hypothetical at all. We had Mr. Prentice's agreement to go by, which is the basis of this also.

Q. Well let us get back to Mr. Prentice. Here is the Prentice proposal Plaintiff's Exhibit 27. Do you see the word expense there? What does it say after that? A. Estimated.

MR. DICKEY: Thank you, Sir.

Q. [By Mr. Dickey] Now with regard to Mr. Williams, do you recall taking Mr. Williams to Mr. Casey's office and meeting Mr. Brady there on January 14th, 1958? A. I don't particularly remember the exact date but I know I went there with Mr. Williams.

Q. How long prior -- was that the first visit you had made there at the time you saw Mr. Brady? A. I don't think so. I think the first

487 time was immediately after Mr. Williams had agreed to act for me, and I think that was the early part of 1957.

Q. Incidentally as far as 1943, 1944, and 1945, were concerned was the ultimate settlement of the deficiency made by Mr. Casey's office ever improved upon by Mr. Williams? A. Mr. Williams?

Q. Just answer that question and give any explanation you want to but will you answer yes or no, Mr. Edell? A. You mean the deficiency?

Q. Was the settlement of the deficiency which Mr. Casey's office made ever improved upon by Mr. Williams? A. Mr. Williams improved upon the 1945 and 1946 taxes. I know that.

Q. All right, would you explain that to us? Are there any duplication of taxes? A. In 1945 and 1946 which Mr. Williams uncovered and he proceeded to get the Tax Department to straighten it out and it was a great savings for me.

Q. Can you see this, Mr. Edell? A. I can.

Q. The amount of \$62,592.54 taxes for 1945? Did you ever pay any lesser amount than that, Sir? A. I don't recall how much I paid. I have paid so much money out to lawyers and so forth, that I don't re-

488 member what the amounts are. My CPA has always taken care of that.

THE DEPUTY CLERK: Plaintiff's Exhibit 41 marked for identification.

(Document marked for identification).

Q. [By Mr. Dickey] Mr. Edell, I hand you what has been marked Plaintiff's Exhibit 41 for identification, being a Power of Attorney and ask you to look at that, and to look at the second page of it also? Have you ever seen that document before and several other copies of that document? A. Yes, Sir, that is my signature.

Q. Where did you sign this document? A. In Mr. Williams' office.

Q. Who prepared it? A. Mr. Williams. The --

Q. His office in any event. A. It specifies his office. I presume it was done there.

MR. DICKEY: Your Honor please, I offer this in evidence.

MR. BERLOW: No objection, Your Honor.

THE COURT: Admitted.

[BY MR. DICKEY:]

Q. Now Mr. Edell did you ever, did there ever come a time when Mr. Williams advised you he had to execute another Power of Attorney?

489 A. It could be. If you would show it to me, it might refresh my memory.

Q. Did Mr. Williams ever tell you there had been an error made and he had to designate individuals rather than offices? A. It could be.

THE DEPUTY CLERK: Plaintiff's Exhibit 42 marked for identification.

(Document marked for identification).

Q. [By Mr. Dickey] I will show you what has been marked Plaintiff's Exhibit 42 for identification and ask you if you have ever seen that document before? A. I have. This is my signature also.

Q. Where was this document prepared? A. It must have been prepared in Mr. Williams' office.

Q. What was the date of Plaintiff's Exhibit 42 for identification? A. May 20, 1958.

MR. DICKEY: I move the admission of that exhibit for identification in evidence, Your Honor, please.

MR. BERLOW: No objection.

THE COURT: Admitted.

(Document admitted in evidence).

490 [BY MR. DICKEY:]

Q. Plaintiff's Exhibit 41 is for what date, Sir? A. May 2nd, 1958.

Q. Did you ever execute a power of attorney prior to May 2nd, 1958 for Mr. Williams? A. I couldn't tell you at this moment.

Q. Mr. Williams wasn't working on a contingency fee, was he? A. No, Sir.

Q. He worked on a flat fee? A. I don't exactly know how they arrived at their fees but when he submitted his bill to me I paid him with a check, and that is all I know.

Q. That was in the amount of \$7,500. A. That is correct, it took exactly one minute to write it out when I received his bill.

Q. I believe you said your relationship with Mr. Amann, your testimony was about a fine relationship personally between you and Mr. Amann? A. I wouldn't say personally, he was my brother's attorney and my attorney and as such over a period of years you get to call each other by their first names, I presume. He was never at my house and I was never at his house.

Q. Wasn't your testimony, your only difficulty with Mr. Amann was with his senior partner, you didn't like him? A. I never had any
491 difficulty of any kind. I may have had a misunderstanding but never any difficulty because I admired and respected Douglas Amann and even suggested that he leave that firm.

Q. Mr. Edell, you didn't answer my question. Did you not testify on direct examination that you had some difficulty with his senior partner, that you didn't get along well with him? A. That is correct.

Q. Now will you answer my question, but you never had any problems with Mr. Amann? A. That is correct.

Q. You first retained Mr. Amann on March 20, 1951, didn't you? A. I beg your pardon.

Q. You first retained Mr. Amann on March 20, 1951? A. I don't recall the date.

MR. DICKEY: Will you please mark these as exhibits?

THE DEPUTY CLERK: Plaintiff's Exhibit 43 marked for identification. Plaintiff's Exhibit 43a marked for identification.

(Documents marked for identification).

Q. [By Mr. Dickey] I show you a letter addressed to Lowenstein, Pitchard, Amann and Parr, bearing the date of March 20, 1951, identified
492 as Plaintiff's Exhibit 43 for identification, bearing the typewritten signature of Harry Edell.

Did you send that letter, Sir? A. I did.

Q. Does that refresh your recollection as to when you first employed them? A. That does, the letter and the date, yes, Sir.

Q. And I show you a bill marked paid for \$2,750, being \$2,500 for services, and \$250.00 for expenses. Is that correct? A. That is correct, I paid them the initial part of their services.

* * * * *

493 Q. -- did there come a time when Mr. Amann billed you for additional moneys for services? A. Yes, Sir.

Q. Did you object to that bill? A. There were certain bills I objected to because they were so petty, such as fifteen cent telephone calls and other things of a like nature.

* * * * *

495 Q. Mr. Edell, look at Plaintiff's Exhibit 44 for identification, being a letter of October 23, 1951, addressed to you from Mr. Amann and see -- is that the original letter received by you? A. This one is.

Q. And Plaintiff's Exhibit 44a for identification, being a letter of October 23, 1951 for \$2,500, was that bill received by you?

And in fact was it enclosed with the letter of October 23rd which is Plaintiff's Exhibit 44 for identification? A. I presume they were obtained together because they are dated the same.

Q. I show you Plaintiff's Exhibit 45 for identification, being a copy of a letter addressed by you to Mr. Amann. A. That is correct.

Q. Dated October 26, 1961, did you send the original of that letter?

496 A. I did.

Q. Then I show you what has been marked as Plaintiff's Exhibit 46 for identification, dated November 8, 1951, a letter addressed to Mr. Amann apparently enclosing a check for \$2,500 signed by you.

Is that your signature there? A. That is correct.

Q. Now you first retained Mr. Amann in March of 1951, is that correct? A. According to that, yes.

Q. And then in October he billed you for an additional \$2,500?

A. According to that, yes.

Q. Then in November you ultimately paid the \$2,500? A. That is correct.

Q. You first said you would like to have a discussion with him, didn't you? A. Yes.

Q. What discussion did you have?

* * * * *

497 A. Eight months had gone by and nothing concrete as yet had taken place. As far as my case was concerned and I wanted to know, as a business man, just how far we were going to go with expenses, and I believe any business man has the right to inquire regarding that.

Q. So you inquired? A. So I inquired.

Q. Now did there come a time when you terminated your relationship with Mr. Amann? A. There was.

Q. Was that relationship terminated in an amicable manner? A. Very much so.

Q. Mr. Edell, I show you a letter which has been marked as Plaintiff's Exhibit 4 from Lowenstein, Pitchard, Amann and Parr, addressed to you, dated July 21, 1954? A. Yes, Sir.

Q. Would you look at that and see if you would like to revise your answer just given? A. Well it is four pages long. I do not think we should take up the time while I read all of that.

THE WITNESS: Just give me some question and I will answer it.

Q. Beginning with the top of the last page just read that sir.

A. That is correct.

498 Q. And you still state your parting was on an amicable relationship? A. Of course, it was. This is purely a business letter objecting to something. That is done every day in the week between business people. One just doesn't accept bills without questioning them.

Q. Did there come a time in the course of your employment of Mr. Amann in which you complained to him from time to time that he wasn't doing anything? A. I certainly did.

Q. And did you have a similar complaint with regard to Pittman and Roberts that they weren't doing anything? A. No, I didn't not to

any degree because I knew they were doing the best they could under the circumstances and I was very inexperienced at that moment as to how things proceeded.

As a matter of fact I was also out of the country a great deal of the time, in India, in China, in Formosa, Egypt, and North Africa, and every place you could think of.

Q. I believe you testified you engaged Pittman and Roberts for the renegotiation case and for the tax case, is that right? A. Yes, Sir, that is correct.

THE CLERK: Plaintiff's Exhibit 47 marked for identification.

* * * * *

499 Q. [By Mr. Dickey] I hand you what has been marked Plaintiff's Exhibit 47 for identification, being a letter addressed to you from Pittman and Roberts dated March 1, 1951 and I direct your attention to the second paragraph of that letter and ask you to read it, Sir? A. We will continue our negotiations with the Department of Justice and endeavor to work out a stipulation concerning your renegotiation liability when these conferences have been concluded we will communicate with you directly for your approval and if our proposal is satisfactory to you -- is that what you want me to read?

Q. That is not the second paragraph. A. It is understood that this firm will have nothing whatsoever to do with the settlement of your income taxes presently being audited by the Collector of Internal Revenue in New York City.

Q. Does that cause you to revise your answer that they were handling your income tax material also? A. As far as I was concerned at that period they were both one and the same thing to me, because one was interlocked with the other.

500 MR. DICKEY: Your Honor please, I offer Plaintiff's Exhibit 47 for identification into evidence.

* * * * *

THE COURT: Admitted.

(Document admitted in evidence).

[BY MR. DICKEY:]

Q. Now Mr. Edell, Plaintiff's Exhibit 4, being the letter of July 21, 1954 addressed to you from Mr. Amann, it refers in there to your letter of July the 15th, does it not?

Right at the beginning? I have your letter of July the 15th. Do you have a copy of that letter of July 15th? A. To Mr. Lowenstein, and Mr. Amann?

Q. Yes, Sir. A. I wouldn't know if I have it. I don't know where it is at this minute. I have no idea, if there is one.

Q. Do you recall what the contents of that letter were? A. Not at this moment. It was a four page letter.

501 Q. No, I am talking about your letter of July 15th, do you recall that? A. No, I don't recall what was in there. That was way back in 1954.

MR. DICKEY: Yes Sir, I understand that and that is why I asked that.

Q. [By Mr. Dickey] Do you recall Mr. Casey telling you that he would not represent you until Mr. Amann had withdrawn from the matter?

A. As an attorney, but he had no objection to meeting with Mr. Amann.

Q. I understand, but as an attorney he wouldn't represent you until Mr. Amann had withdrawn? A. That is correct.

THE DEPUTY CLERK: Plaintiff's Exhibit 48 marked for identification.

(Document marked for identification).

MR. BERLOW: Where is the last of that letter?

MR. DICKEY: I do not have it.

[BY MR. DICKEY:]

Q. Mr. Edell, I hand you what has been marked Plaintiff's Exhibit 48 for identification, appearing to be a carbon copy of a letter dated July 15th, 1954.

Two pages of said letter, would you look at the first two pages of that and read it carefully and see if that refreshes your recollection as to the contents of your letter of July 15th to which Mr. Amann refers in Plaintiff's Exhibit 4? A. Yes, Sir.

502 Q. Do you recall how many pages were in the original letter?

There are only two pages here. A. No, I don't recall.

Q. Is the language in this letter, would you read it carefully and see did you write that letter? A. I wrote that letter. You don't have to worry about that. I will admit to that.

* * * * *
Q. Mr. Edell, I believe you testified that you had paid Mr. Amann how much money over this period of time? A. I can't tell you exactly but somewhere between 12 and 15 thousand dollars.

* * * * *
503 Q. You paid Pittman and Roberts some \$6,000? A. Approximately that, yes.

Q. And you paid Mr. Williams some \$7,500? A. That is correct.

Q. Did any of those gentlemen do anything for you that Mr. Casey did not do? A. (Laughter on the part of the witness). It all depends upon the agreement that Mr. Casey didn't carry out his agreement with me. When I had arrived with Mr. Casey I had already learnt the type agreement that I wanted.

Q. Now is it your testimony that the July 15th agreement referred to Mr. Amann's estimate of the tax savings, is that correct? A. Plus the renegotiation.

Q. Just one at a time? A. Yes, sir.

Q. It did not refer to the revenue service deficiency assessment? A. Do you mean Mr. Amann's letter?

Q. No, Mr. Casey's agreement did not refer to the deficiency assessment by the Internal Revenue but rather referred to an estimate by Mr. Amann? A. That is true.

Q. It is also your testimony that the agreement of July 15th referred to Mr. Amann's calculation of the net worth of the Justice Department offer and not to the Justice Department offer itself? Is that correct?

504 A. That is correct.

MR. DICKEY: I have nothing further.

MR. BERLOW: Mr. Edell, the Court inquired during the course of examination as to the bill which you received on October 7th from Mr. Casey which is marked as Defendant's Exhibit 9. I just want to ask you a few questions in reference to that.

REDIRECT EXAMINATION

BY MR. BERLOW:

Q. After you received that bill did you have, and just answer this question yes or no, did you have a discussion with Mr. Casey in reference to it? A. I did.

Q. And how long after receipt of the bill, was it, that you had this discussion with Mr. Casey? A. Within a few days.

Q. Now at any time thereafter did you receive another bill, statement, letter, or anything in writing, requesting payment of the renegotiation fee alone? A. I never got another one.

Q. I show you defendant's Exhibit 10, which is dated February 18, 1959, about a year and a half after the renegotiation bill was received, and I ask you if that bill was the first request that
505 you received from Mr. Casey for payment after he submitted the bill for the renegotiation? A. That is correct.

Q. Now when you discussed this with Mr. Casey, the matter of the renegotiation bill, which has been marked as Defendant's Exhibit 9, when you had your oral discussion with Mr. Casey as to that bill, did you at that time explain to him in detail your understanding as to what the agreement between you and he consisted of? A. I did.

Q. And did Mr. Casey agree or disagree with your explanation?
A. He agreed.

Q. Did he write anything expressing this agreement with your understanding? A. He did not.

Q. Now would you tell us what you told him at that time as to what was your understanding as to the agreement that was entered into between the two of you? A. I said: Bill, you haven't done only half the job, you haven't yet improved on Mr. Amann's cost in the Tax Court, estimated cost in the Tax Court of approximately \$40,000. This is part of our original agreement and if you improved on one or improved on the other, or vice versa, they must be bounced out so we come to a net result.

506 Q. Did Mr. Casey reply to that? A. He said that is true.

He agreed to that.

Q. Did you ever hear from him in reference to that matter again until the completion of the income tax matter? A. I did not.

Q. Now Mr. Dickey inquired as to whether or not at the trial of this case before Judge Heron it came to your attention that a stipulation had been entered into as to expenses.

Did that come to your attention at that time? A. Not as to the amount of expenses.

Q. But it was brought to your attention that such a stipulation had been entered into? A. That is correct.

Q. Did you make inquiry of Mr. Casey as to the terms of that stipulation? A. I did both the first night and the second night.

Q. Mr. Dickey wanted to know whether you ever made written inquiry of Mr. Casey as to that written stipulation and your answer was no, you didn't? A. That is correct.

Q. Did Mr. Casey ever make written inquiry of you prior to the time the stipulation was entered into, did he ever inquire of you in writing as to whether or not this stipulation was acceptable?

507 A. He did not.

Q. Did Mr. Casey correspond with you frequently or infrequently during this period of time? A. Very frequently.

Q. Could you give us an estimate of the time or the number of letters that Mr. Casey or Mr. Brady wrote to you during the period of time they represented you? A. That is very hard to do; that is very voluminous.

Q. Was it as many as 25 or 50? A. Oh, it was much more than that.

Q. In any of the letters that they wrote to you they retained copies, did they not? A. Yes, sir.

Q. In any of the letters they wrote to you prior to the time this stipulation was entered into, did they ever advise you that such a stipulation was going to be entered into? A. No, sir.

Q. Did there come a time when they did send you something in writing, advising you that this stipulation had been entered into?

A. No, sir, the first time I had ever heard of it, I believe, was the brief I received in March or August of that year.

Q. And in their brief was mention made of this stipulation?

508 A. I don't remember exactly whether they did or didn't.

Q. How many agreements did Mr. Casey all together ask you to sign? A. I believe there were six of them.

Q. And did you sign all of them? A. I did.

Q. Now specifically in reference to the one that is marked Defendant's 8, the second paragraph, it says: It is understood that I am not authorized to make any final settlement without your explicit approval. Do you remember Mr. Dickey inquiring as to this?

A. Yes, sir.

Q. Now prior to the time that Mr. Casey and yourself executed that, did you discuss the various agreements that had preceded it? A. I discussed the first one particularly.

Q. And did you discuss it in reference to his not having authority to make final settlement? A. I sure did.

* * * * *

509 Q. Referring again to Mr. Dickey's interrogation as to this letter, did you at any time, was it understood orally at any time, that Mr. Casey could make a settlement of this matter without your consent?

A. He could never make a settlement without my consent.

Q. Now after it did come to your attention when you received the brief, and after you had had this discussion with Mr. Casey as to his premature bill on the renegotiation matter, did you or did you not become concerned as to your relationship with them? A. I was definitely upset. I was furious, as a matter of fact about the stipulation made in court.

Q. And did you at some time or other retain someone to supervise their work? A. I did.

Q. And who was that? A. Mr. Laurence Williams.

Q. And you said you paid him. I show you this check dated April 1, 1959 and ask you if that is the check you made to Mr. Williams?

A. It is.

Q. Did Mr. Williams constantly keep you advised as to discussions and arrangements Mr. Brady was making to the Internal Revenue? A. He did.

510 Q. Now Mr. Dickey went into some lengthy interrogation as to Mr. Amann's and your relationship.

After this exchange of correspondence with Mr. Amann, did you invite Mr. Amann and Mr. Casey to have lunch together? A. I did.

Q. And did you and Mr. Amann and Mr. Casey have lunch together? A. We did.

Q. And did you discuss Mr. Amann's calculations as to the renegotiation and the tax matter? A. We did. That was the purpose of the luncheon.

Q. Did Mr. Casey indicate a lack of understanding of Mr. Amann's calculations? A. Not at all.

Q. Now at the time you entered into the agreement that is written here, that is July 28th, 1954, you signed that agreement at Mr. Casey's office? A. I did.

Q. Now at that time did Mr. Casey call Mr. Prentice and inquire as to whether the offer was still open? A. I don't know whether he did or not.

Q. Now whether the offer was still open at that time was something you and Mr. Casey assumed, was it not? A. That is correct.

Q. That was a hypothetical assumption? A. That is correct.

511 Q. And the same assumption was made in regard to the tax matter, wasn't it? A. That is absolutely correct.

* * * * *

Q. All of these letters Mr. Dickey exhibited to you, all of this correspondence between yourself and Pittman and Roberts, and Amann and Lowenstein, all of those letters were they not, in the possession of Mr. Casey and Mr. Brady prior to the time that you entered into an agreement with them? A. Yes, sir.

512 Q. When was it all of this correspondence was delivered to Mr. Brady? A. July 23, 1954.

Q. And of the six agreements that Mr. Brady had you signed, most of them were executed after he had gotten all of this correspondence? A. That is correct.

* * * * *

Q. Did Mr. Casey prior to his accepting employment as your attorney, did he make any detailed inquiry of you as to the nature of your relationship with your prior attorneys? A. He did not.

Q. And did you explain that to him? A. I did.

Q. And was this explanation in accordance with the correspondence that Mr. Dickey has exhibited to you? A. It was.

Q. And did Mr. Casey say under the circumstances, because you made inquiries as to bills and disbursements, that he would not undertake to represent you? A. He did not.

Q. Was it understood that you as a client, were entitled to make inquiries as to the nature and the basis for a bill? A. Yes, sir.

513 MR. DICKEY: I would object to that. It calls for a conclusion from the witness.

MR. BERLOW: I will withdraw the question, Your Honor.

THE COURT: Very well.

BY MR. BERLOW:

Q. I show you this exhibit which has been marked as Defendant's 14 for identification and ask you to read it, the date of that, and tell me whether or not that refreshes your recollection, that the deficiency asserted in the tax case was reduced to a writing in a many page report series, 1949, as early as 1949? A. Yes, sir.

Q. And was that the document that you have there, if you recognize it? A. This is a deficiency notice from the Treasury Department for the years 1943, 44, and 45.

Q. What is the total figure that appears there as deficiency total additional tax? A. \$175,944.29.

Q. Was it ever explained to you whether or not that figure took into account the expenses at all? A. None at all.

Q. It disregarded any expenses? A. Completely.

* * * * *

514 Q. Mr. Dickey developed these other lawyers whom you employed had not been on a contingency fee arrangement, is that a fact? A. That is correct.

Q. They were employed on an hourly basis? A. Hourly or daily, I don't know how they arrived at it.

Q. Now I ask you, did any of these other attorneys that ever represented you, ever enter into any stipulation without your consent in writing? A. Never.

Q. Your consent was obtained in writing in all of these instances? A. At all times.

Q. Did Mr. Williams explain to you in detail the nature of this type settlement? A. He did.

Q. Did he explain all of its elements? A. He did.

515 Q. And after that detailed explanation did he exhibit the documents to you? A. Yes, sir, before and after.

Q. Mr. Amann, in fact, sent you these detailed calculations showing the settlement Mr. Prentice had proposed, did he not? A. That is correct.

Q. And did Mr. Amann explain that to you in detail? A. He did.

Q. Did he explain to Mr. Casey in detail? A. He did.

Q. Did he make that explanation in your presence? A. He certainly did.

MR. BERLOW: I have no further questions, Your Honor.

RECROSS EXAMINATION

BY MR. DICKEY:

Q. I believe you said Mr. Amann sent these materials over to Mr. Casey on July 23rd? A. That is correct.

Q. Don't you mean July 27th, Mr. Edell? A. No, I received Mr. Amann's request for \$1,855.00 in a letter dated July 21st and I made the check out and immediately delivered it to him, or mailed it to him, I don't know which it was. And he said he would send them up that day.

516 Q. Was that as of that date you are basing your July 23rd date on? A. That is correct. I was not in Casey's office to receive them.

Q. You weren't there when they got them? A. No, sir.

Q. As a matter of fact Mr. Edell, how many stipulations did your other counsel enter into during the course of their representation of you? A. As to what?

Q. As to anything. A. I don't know of any stipulations other than the customary things. It wasn't pertinent as to settlement as far as dollars were concerned.

Q. As a matter of fact they didn't enter into any stipulations, is that correct? A. I don't know whether they did or not.

Q. Your meeting with Mr. Amann and Mr. Casey you said was in July. Isn't it a fact that that was in May? A. It could have been in May. As a matter of fact I believe it was before July.

Q. It was before July? A. That is right.

Q. Although you testified it was after July, after the letter.

517 A. Oh no, no.

* * * * *

JOSEPH SHER

having been called as a witness by the defendant, and having been duly sworn, took the stand, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BERLOW:

Q. Would you state your full name please? A. Joseph Sher.

Q. Where do you live, Mr. Sher? A. 1005 Platford Lane,
Silver Springs, Md.

518 Q. How are you employed? A. I am self-employed.

Q. In what profession? A. As an accountant.

Q. Are you a certified public accountant? A. I am.

Q. How long have you been a certified accountant?

A. Approximately 11 years.

Q. And where did you receive your certification? A. In the
District of Columbia.

Q. And prior to that time had you also done accounting work?
A. I have.

Q. For how long a time have you been an accountant? A. For
approximately 20 years.

Q. And does your work involve you in Federal income tax
matters at all? A. It does.

Q. Do you specialize in those matters? A. I do.

Q. Have you had any educational training in accountancy?

A. I have.

519 Q. Where was that? A. At St. John's University, Brooklyn,
New York; at the American Institute of Tax; Tax studying here,
and also at the D.C. Workshops.

Q. Did you receive a degree from any University? A. Yes,
I have.

Q. What University is that? A. St. John's University,
Brooklyn, New York.

Q. What was the degree that you received? A. Bachelor of Business Administration.

* * * * *

Q. I show you plaintiff's Exhibit 6 for identification, which is a letter dated July 28, 1954 signed by Harry Edell and William J. Casey, and it is addressed to Mr. Casey from Mr. Edell.

Did there come a time, Mr. Sher, when I gave you that contract and asked you to read it and examine it? A. You did.

Q. And did you do that? A. I did.

Q. Now after you had done that, did you examine -- I show you Defendant's 14 for examination which is the Treasury Department, Internal Revenue Service, a letter to Mr. Edell from that service, and ask you if you examined that as well? A. I have.

* * * * *

520 THE DEPUTY CLERK: Defendant's Exhibit 15 for identification. (Document marked for identification).

* * * * *

BY MR. BERLOW:

521 Q. This is the first and second pages of this. I show you what has been marked as Defendant's Exhibit 15 for identification, Mr. Sher, and ask you whether I delivered this to you previously and asked you to tell us what that is? A. This is a letter from the Internal Revenue Service of the United States Treasury Department, addressed to Mr. Harry Edell and in substance it says this is the proposal for the settlement of the proposed transaction filed by this office and has been accepted.

Q. What are the enclosures? A. It is the final preparation of the 1943, 44, 45 tax deficiencies for the years in question.

Q. I show you Plaintiff's Exhibit 37, which is a letter from Mr. Douglas Amann to Mr. Edell, dated March 8, 1954, and ask you if that was exhibited to you previously? A. Yes, it was.

Q. Now based on those documents and the contract, Mr. Sher, did I ask you to make certain arithmetical and mathematical computations? A. You did.

Q. Did you make those computations? A. I did.

THE COURT: Defendant's Exhibit 1 was offered a short time ago and I understood you to say you had no objection.

MR. DICKEY: No objection, Your Honor.

522 THE COURT: Defendant's Exhibit 1 for identification is admitted into evidence. (Document admitted into evidence).

* * * * *

Q. (By Mr. Berlow:) I show you Defendant's Exhibit 16 for identification, and I ask you if that is a chart showing the calculations you made? A. It is.

* * * * *

524 Q. Mr. Sher, I think I asked you as to the documents which you examined, and do you have before you now all of the documents you examined prior to the preparation of this chart? A. Yes, sir.

THE COURT: Suppose you give us the numbers they are. I believe you said Plaintiff's Exhibit 6? Is that right?

THE WITNESS: Yes, Your Honor.

THE COURT: Defendant's 14?

THE WITNESS: Yes, Your Honor.

THE COURT: And what else?

THE WITNESS: Defendant's 15.

THE COURT: 15?

THE WITNESS: Yes, Your Honor. And Plaintiff's 37.

525 Q. (By Mr. Berlow:) Are those documents enumerated all of the documents that were used in the preparation of this chart? A. Yes, sir.

Q. Now referring to column 1, which is headed Proposed Deficiency. Now, I ask you to refer to the contract which is dated July 28, 1954 and is marked Plaintiff's Exhibit 6 and ask you if that expression is used in that contract? A. It is.

* * * * *

MR. BERLOW: I will withdraw that question, Your Honor.

Q. (By Mr. Berlow:) Did you determine, Mr. Sher, from one of the documents that you have already mentioned, did you make a determination of what was the proposed deficiency? A. I did.

Q. What document did you use to make that determination?
A. Defendant's Exhibit 14, Internal Revenue Service Proposed Deficiency Report.

Q. And where on that document do the items appearing in column 1 appear? On what page of that document? A. On the latter page dated August 26, 1949, from the Second New York Division, 90 Church Street, Internal Revenue Service.

526 THE COURT: May I see the paper that he has just described this from? I cannot tell by reference to these pages what they are.

Q. (By Mr. Berlow:) Now from what document did you determine the figures contained in column 2 headed Final Settlement?
A. Defendant's Exhibit 15, United States Treasury Department, Internal Revenue Service, the examining agent's report.

Q. Is that on the second page? A. Of the analyses is on the second --

Q. Where is the final settlement? What page is that on?
A. On the first page of his report.

* * * * *

THE COURT: You say that was number 15, page 1? Is that what you are saying?

THE WITNESS: Yes, Your Honor, the page right behind the addressing letter.

* * * * *

527

BY MR. BERLOW:

Q. But the figures obtained from that paper, are the figures that you used under the column, Final Settlement, are they not, Mr. Sher? A. Yes.

Q. Referring now to column 3, did you make a determination of the amount repaid as a result of renegotiation? A. Yes.

Q. And where did you get that figure? A. From the same Report.

Q. After you had assembled those three columns showing the items by the year, did you make an additional calculation? A. Yes.

* * * * *

528 Q. Would you tell us what you assumed the agreement was? A. When you came to me, you said to me here are documents, here is the contract and now determine the clients liability.

Q. In accordance with the agreement did you make certain calculations? A. Yes.

* * * * *

529 Q. Will you tell us, Mr. Sher, what you assumed the agreement was after you read it? A. I assumed that the agreement had certain figures in here. And I used the figures that to my mind were as they were stated in the contract and interpreted those items into figures.

Q. And then did you make some calculations based upon certain figures? A. Yes, I did.

Q. What were the calculations that you made?

* * * * *

530

MR. BERLOW: I will start all over again.

Q. Did you make a determination as to what calculations had been made in accordance with that agreement? A. Yes.

Q. What calculations did you determine had to be made? A. Well --

Q. What additions or subtractions? A. I determined that I have to arrive at a balance.

Q. What did you have to add from or to what or subtract?

A. I had to start with the proposed deficiency. To that I had to subtract --

THE COURT: What did you start with for the proposed deficiency?

THE WITNESS: \$175,944.29, Your Honor. From that I had to deduct the amount repaid to the United States Government as per the agent's report.

Q. What figure was that? A. \$115,180.53.

Q. When you did that, what figure did you arrive at?

A. \$60,763.76.

Q. That appears in the summary underneath the calculation?

A. Yes, sir.

Q. And what other figure did you use? A. Then I had to find out what was actually paid in the final settlement of the income taxes.

531 Q. And what was that figure? A. \$97,898.80.

* * * * *

532 Q. Now did you, Mr. Sher, in reading the contract, did you read the sentence, look at it please, did you read the last sentence of the first paragraph which says: It is understood and agreed that in determination of your fee the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation.

Just tell me, did you read that? A. I did.

Q. Did you deduct and did you decide what the proposed deficiency was?

THE COURT: He has already testified he deducted \$115,180.53, didn't you, and you had left \$60,763.76?

THE WITNESS: Yes, Your Honor.

* * * * *

533

BY MR. BERLOW:

Q. What did you assume in making these calculations?

A. I assumed that I had to, if I was to prepare a financial statement for this gentlemen, I would have to reflect in his financial statement any liability that he would be subjected to of any consequence, whether it is this contract or any other contract. As an accountant it is my duty to do it. Otherwise, so I prepared two analyses.

* * * * *

Q. Well isn't it a fact, what you did Mr. Sher, in accordance with this contract, with its language, from the deficiency proposed by the United States Government, did you reduce that by the amount repaid as a result of the renegotiation? A. I did.

Q. What figure did you come up with? Is that \$60,700?

A. Yes, sir, \$60,763.76.

Q. Then did you determine the difference between the proposed deficiency and the final settlement? A. Yes.

Q. And what was that? A. The proposed deficiency, \$175,944.29, and the final settlement was \$97,898.80.

Q. After deducting the amount paid as a result of renegotiation was there or was there not a cash loss? A. After deducting these two amounts there was a tax saving, a cash saving.

Q. When you deducted the amount repaid as a result of the renegotiation was there a cash loss? A. Yes.

Q. What was that? A. \$37,135.04.

* * * * *

Q. Did you prepare another chart on the second page?

A. I did.

Q. Did the item designated as final settlement income tax, did you get that from the same place you testified you have already got it? A. Yes sir.

535

Q. Incidentally that is precisely to the penny, the same figure which appears on this chart, which is now Plaintiff's Exhibit 18a? That is the same precise figure? A. Except for five cents difference.

Q. A difference of five cents. Did you examine a letter from Mr. Amann to Mr. Edell dated March 8, 1954? A. Yes, sir.

Q. And did you take the figures that appeared in there as being the taxes due? A. Yes, sir.

Q. And did you subtract that from the final settlement arrived at? A. Yes, sir.

Q. And were there more or less taxes paid as the final settlement than would have been paid in accordance with Mr. Amann's letter? A. There were additional taxes paid.

Q. How much more? A. \$56,833.97.

Q. Did you determine a figure as being the savings alleged to have taken place in the renegotiation? A. That was given there, also written material on it, which I didn't examine. I just accepted.

536 Q. As being \$33,000? A. Right.

* * * * *

Q. When you used the expression Prentice's proposal, Mr. Sher, would you tell us whether or not you made reference in using that expression, to the Amann letter of March 8, 1954? A. Yes, I did.

Q. What was the, in using the expression Prentice proposal, what was the figure -- what was the amount of dollars that you used as appeared in that letter of Mr. Amann's of March 8, 1954? Does that appear in the second line there? Are you looking at the second page?

I am asking you about the chart which you had prepared.

A. Yes.

537 Q. What was the figure that you used which you obtained from the Amann letter of March 8, 1954? A. \$41,064.83.

Q. And you accepted that as being the savings in renegotiations, the sum of \$33,000? A. Yes, sir.

Q. I point to this, which is Plaintiff's Exhibit 17, and there has been substituted for that Plaintiff's Exhibit 17a, I point to line 3 on that, which is called Reduction obtained by Attorney Casey, \$33,000, and ask you if that is the same figure that you used? A. That is the same figure.

Q. Now returning to the chart on page 1, your first chart rather, the first page thereof, which is Defendant's 16, that chart was prepared after you had carefully read and examined Plaintiff's 6, wasn't it? A. Yes, sir.

* * * * *

CROSS EXAMINATION

BY MR. MILLER:

* * * * *

538 Q. Suppose you tell me and then give to me the documents upon which you relied in making your chart. A. The proposed deficiency, Defendant's 14. The Internal Revenue Agent's report shown, a tax liability for taxable years in the December 31st 1943 and inclusive 1945.

THE COURT: What is the exhibit number?

THE WITNESS: Exhibit 15. Defendant's Exhibit 15 and I also used Defendant's No. 15 which is column 3 of the report submitted.

Q. (By Mr. Miller:) What other document did you use?

A. And the contract.

THE COURT: I think it would be better to specify them by number.

THE WITNESS: Exhibit 6, Plaintiff's Exhibit 6 and --

THE COURT: Plaintiff's 37, wasn't it?

MR. MILLER: Plaintiff's Exhibit 6 is what he gave me.

THE WITNESS: And here is Plaintiff's Exhibit 37, and also the letter, or whatever the --

THE COURT: Defendant's Exhibit 15, page 1, wasn't it?

THE WITNESS: Well that page 1 was the accompanying letter. Page 1 is the accompanying letter, Your Honor, to the tax liability
 539 deficiency, and the letter of the statement that shows \$33,000.

MR. BERLOW: That is on 17a.

Q. (By Mr. Miller:) Do I understand you used and used only Defendant's 14, Plaintiff's 37, Plaintiff's 6, Defendant's 15 and the chart which is -- A. I didn't use the chart. I used the information from which the chart came because this was prepared before I saw the chart.

Q. What are you referring to then? Are you referring to a typed sheet which sets up the information on the chart? A. Right. No, no.

Q. Well what did you use? A. Well, as I said, I will see if I have a notation in my files where I used to obtain the \$33,000. Less savings renegotiations I have a comment here, \$33,000.

MR. BERLOW: We have explained them all except where he got the \$33,000.

THE WITNESS: Oh yes, that was given to me except that was accepted. Mr. Berlow gave me the \$33,000 and he said use this \$33,000 as a deduction in the final statement, in the second statement.

BY MR. MILLER:

Q. Then would your figure of \$33,000 be the difference between the final gross settlement offer of the Department of Justice of \$183,000
 540 as shown on Plaintiff's Exhibit 17 and the judgment of the Tax Court after trial of the gross amount, of the excessive profits was \$150,000? The difference between those were \$33,000? A. Yes.

Q. That is the \$33,000 you used as showing the savings that were reflected as effected by Mr. Casey on renegotiation, on the renegotiation case? A. That is right. That is a savings of renegotiation.

Q. Mr. Sher, your column 1 -- now you have listed for the years 1943, 1944 and 1945 the proposed deficiency, haven't you?

A. Yes, sir.

Q. Now it is your understanding, is it not, that those figures totalled \$175,944.29 were the amount of deficiencies in income taxes that the agent assessed or claimed were due by Mr. Edell in addition to what he paid for income taxes before for those years? A. Yes, sir.

Q. They were deficiencies? A. Yes.

Q. Isn't it also your understanding that the \$175,000 figure contained within it adjustments for excessive profits that Mr. Edell was claimed to have owed the United States Government? A. If that
541 was the basis upon which the revenue agent determined the \$175,000 then that is --

Q. Wasn't that the basis on which he determined the \$175,000? A. I didn't go into that because I was, all I was governed by was the proposed deficiency.

Q. Well, do I understand you don't know what basis the proposed deficiency was arrived at by the agent? A. No. I mean I didn't go into it. According to the statement I was supposed to prepare, was what was the proposed deficiency, that is what I went into.

The contents that made up the proposed deficiency wasn't required for my computation.

Q. Well now, didn't you have defendant's 14, which is the basis of the proposed deficiency? A. According to the word proposed deficiency in the contract, it didn't -- all I had to do was to accept the revenue agents words. I am not a lawyer.

Q. Well, I know but all I am going to ask you about is that you are not construing any contract as to what proposed deficiency means in a contract, are you? A. No, I am going by the revenue agent's figures.

Q. And you looked at the revenue agent's figures, didn't you?
542 A. That was all I was concerned with. I set that forth. That is all I was concerned with because I was specifically concerned with the proposed deficiency.

* * * * *

THE WITNESS: I am not a lawyer and I was not interpreting any contract.

* * * * *

BY MR. MILLER:

Q. Will it make any difference in your calculations if you knew, if you had read defendant's 14, which was in your possession, being the agent's report, that the \$175,000 figure included computations whereby the Government was claiming excessive profits from Mr. Edell and hence was giving him credit for income on which he had paid a tax, on which he wasn't required to pay it, would not that have made a difference in your computation? A. It wouldn't have made a difference at all because I was only concerned with the terminology of proposed deficiency.

Q. Where did you get the terminology of proposed deficiency?

A. Other CPA's and tax experts went into that prior to that.

543 MR. MILLER: I disclaim that answer as being unresponsive

THE COURT: Now just a minute. We do not care what other accountants have done. What we want to find out here is what you have done.

Now you listen to his question and then just answer the question as he puts it.

Q. (By Mr. Miller:) Mr. Sher, don't you realize that your figure in column 3 repaid as a result of renegotiation, contains computations giving the tax payer credit for income tax as paid on excessive profits? Don't you realize that? A. I do..

Q. And don't you realize also that same credit was built into column 1, \$175,000, because the agent in computing it, had also taken into consideration taxes paid on what turned out to be excessive profits? Isn't that right? A. Right.

Q. In other words, then you made a deduction twice, or claimed a credit twice?

THE COURT: Give him a chance to answer these questions.

THE WITNESS: Well I didn't -- I started off -- I have to repeat again because it is the -- it is the tax to live with -- you will have to
 544 live with me a little bit for me to prepare a statement of this type.

I had to get the figures from the sources mentioned in the contract. The proposed deficiency. I had to accept what I saw. Years have transpired and if they were right or wrong I couldn't have done anything with them. I had to use the final settlement from the Internal Revenue Report which was accepted and paid.

It also said that I am supposed, that the proposed deficiency would be reduced by any amount repaid by Mr. Edell and there is a \$115,180.53 which I deducted, Your Honor.

* * * * *

BY MR. MILLER:

Q. I would like now, if you will please, answer my question as to whether or not it is true that the total of column 1, Proposed Deficiency, and total of column 3, Repaid as a Result of Renegotiation, contained a double credit to the tax payer to the extent he is given credit for payment of taxes on what turned out to be excessive profits. Isn't that right? A. You are asking me that as an accountant?

Q. I am asking you as a witness, sir. If you don't know, say so.

* * * * *

545 THE WITNESS: He paid taxes on \$115,000 -- he paid taxes on figures which made up \$175,000.

The tax -- I will rephrase that. He paid taxes on a sum which, which if effected a proposed deficiency of \$175,944.29.

Q. (By Mr. Miller:) Now the \$175,000 claimed or proposed deficiency, according to the Defendant's Exhibit 14, the Agent's Return, already contained credit as excessive profits, didn't it?

I refer you to page 8 of Defendant's 14, for example. On page 16 I think -- pardon me, pages 8 and 14 I think show what we are discussing, Mr. Sher. A. The proposed deficiency was based on this report, yes.

* * * * *

Q. Will you tell us whether or not the amount claimed for the proposed deficiency on taxes already contains built into it a credit to the tax payer on account of excessive profits on which he had previously paid income tax?

546

Do you follow my question? A. The reason I am hesitating is that he paid certain taxes on certain figures. What he paid or how much he paid and on what the figures were, I don't know.

Q. Isn't it necessary to know what those figures were or to know what the deficiency consists of? A. In this particular case, no, because this deficiency was prepared August 26, 1949.

Anything that transpired some three years later, or when they settled, has no bearing on what I had to do here.

Q. Mr. Sher, I am not asking you what he had to do when they settled. I am asking you what the computations shown there, if the Internal Revenue or the Government hadn't already made a computation on the excessive profits as of that date and not afterwards? A. Over here I see they are using a partnership income; they mentioned two people, Harry Edell and Lewis Edell, so I don't know on what basis.

Q. Do you see the figure \$85,000, Mr. Sher? A. Yes.

Q. What does it say? A. It says (b) reduction of excessive profits due to unilateral determination in renegotiation proceedings instituted by the Army Department.

547 It is under the caption Schedule No. 8a, Explanation of Items No. 7. Partnership Income Understated \$42,073.93.

Q. Pardon me. I just asked about the \$85,000. A. Yes, but I have to tell you this where it is coming from. I have to give you the complete --

Q. Finish your answer. A. -- the (a) CRAR June 9, 1948, on partnership route taxable 100% due taxpayer. Income paid RAR \$111,108.81. Income per return \$36,969.89. Increase \$74,138.92.

Q. Now having read all of that, will you tell me what the \$85,000 figure is? A. It says here reduction of excessive profits due to unilateral determination in renegotiation proceedings instituted by the Army Department.

Q. Now Mr. Sher, doesn't that to you, as an accountant, mean that the Internal Revenue Service is deducting from taxable income an amount that they have unilaterally, they or someone else, has unilaterally determined to be excessive profits? Isn't that what it says there? Isn't that what it means? A. If that is what it says, it is a reduction of excessive profits due to a unilateral determination and renegotiation from proceedings instituted by the Army Department. That is what it says.

548 Q. Yes, so that means, does it not, that the Internal has already in arriving at what you call proposed deficiency, they have already made computation giving tax payer, giving the taxpayer credit for excessive profits determined on a unilateral basis, in that case the sum of \$85,000 for the year in question?

Isn't that correct? A. No I can't answer that because I would have to review every facet of this report from 1 to 17 to make certain that is what it means.

I didn't even see this. This is the first time I saw this. You may be right.

Q. Haven't you testified that report consisting of 17 pages, or whatever it is, is one of the basis upon which you made your computation in the chart? A. I testified I took the deficiency. I didn't go into the heart that made up this deficiency.

Q. You don't know anything about the way that deficiency is arrived at? A. I don't. And --

Q. Just answer my question, do you or do you not? Do you or do you not know how that deficiency is arrived at? A. No, I do not.

* * * * *

549 Q. Now Mr. Sher, do you or do you not know that column 3, repaid as a result of renegotiation, contains a computation giving the

tax payer credit for excessive profits as determined by the tax court?

You know that, don't you, or do you? A. No, the only thing I know --

Q. No, just tell me if you don't know, I won't inquire.

I understand you don't know whether one and three contain the same item of computations for renegotiation? A. I don't know.

Q. Now you do know, do you not, that the proposed deficiency of \$175,944.29 means final settlement of \$97,898.80 equals a certain amount of savings? A. Yes, sir.

Q. How much is the amount of tax savings on that basis? A. This is the difference between my column 1 and my column 2, the difference of tax savings is \$98,045.49.

Q. And you don't know or don't you know that Mr. Casey's fee contract entitled him to 30% of the difference between the amount of
550 the proposed deficiency and the amount of the final settlement?
A. What I know about Mr. Casey's deficiency contract is that 30% of the difference between the proposed deficiency and the final settlement, proposed deficiency will be reduced by any amount repaid.

* * * * *

551 Q. Now let me ask you to assume, Mr. Sher. A. Right.

Q. Let me ask you this, that Mr. Casey, or any lawyer, had a contingent fee contract regarding income taxes which provided that he was to receive a contingent fee basis of 30% of the difference between the proposed, or asserted tax deficiencies, and the amount finally paid in settlement with one exception, the exception being that there were going to be certain automatic reductions in the amount of income tax claimed by the Government because it was going to be necessary to recompute the original amount claimed, to give effect to an excessive --
am I going too fast? A. Reduction with one exception?

Q. With one exception as I have stated to you. A. Yes.

552 Q. Except that any reduction in the amount claimed by the Government originally to a lesser amount resulting solely from giving the tax payer credit for certain excessive profits.

* * * * *

553 Q. I am showing you one paragraph which is the second last paragraph on the bottom of Plaintiff's Exhibit 7, the first page, and ask you to read that, to read that setting forth the question in the single exception still pending before you Sir?

MR. MILLER: Might I inquire what the witness is doing? I don't mean to be impolite.

THE WITNESS: I am trying to find out what this means and I think I got to it. 30% on the deficiency between the taxes, 30% of the difference between tax deficiencies assessed between 1943, 1945 and 1946, I don't have.

MR. MILLER: All right.

THE WITNESS: The amount finally paid in settlement of these deficiencies, except the contingency fee will not apply to reductions in the tax assessed effected as a result of that amount paid out on renegotiation.

* * * * *

BY MR. MILLER:

556 Q. Now Mr. Sher, I am asking you to assume a contingent fee agreement for 30% of the difference between the amount of the deficiency claim by the Government and the amount determined to be due by excluding the computation for excessive profits as reflected in the second last paragraph of the exhibit which I just showed you.

Upon that basis are you able to compute the amount saved by the hypothetical attorney, assuming that the original amount, the original amount claimed by the Internal Revenue Service is \$175,944.29.

Assuming further that after determination of excessive profits, recomputation to give the tax payer the benefit of the taxes paid on income that turned out not to be income, results in a revised claim thus computed by Internal Revenue of \$124,611.42.

557 Assume, do you have that down, Mr. Sher? A. The second figure?

Q. Yes. A. The second figure and I understand, if I understand your question correctly, the second figure is what the Internal Revenue assumed?

Q. As far as what the Internal Revenue claims after determination finally of the excessive profits? A. That is the final determination?

Q. Do you have that figure down? A. 124. I don't think that is the figure. I don't think that is the figure the Internal Revenue finally came about. The final figure, or the final settlement was \$97,000. I just want to correct the record with the figures, because I am not trying to be evasive.

Q. Well I know. I am asking you to assume this to be the amount originally claimed by the Government, corrected because of the fact of interest and so forth to certain dates. A. Right, right.

Q. That is \$124,611.42? A. Right.

Q. Assume further that the amount determined upon such computation is \$97,898.75. Assuming those facts what, if any, tax savings would be effected to the tax payer?

MR. BERLOW: Your Honor, I don't know whether this would save time but I stipulated in the pre-trial order that this calculation
558 was accurate. I never raised any question about it. Assuming that, I think, we might save time on that. I agreed to that. And I agree to all of the plaintiff's calculations, that they are correct. I never disputed that from the time the complaint was filed. My position is the interpretation was wrong. That is my only position.

THE COURT: What he is now doing is undertaking to cross examine the witness on his figures that he has given.

Q. (By Mr. Miller) Do you have the result there? A. I got lost there in the figures.

THE COURT: I will ask the Reporter to read what the witness said. (The Reporter read the witness' last answer).

Q. (By Mr. Miller) Mr. Sher, would you mind telling me what figures you have started with the original proposed deficiency? A. That is the only thing I have, \$175,944.29, subtracting --

Q. Yes, Sir. Assuming that is corrected to an amount claimed by the Government after computation of excessive profits of \$124,611.42. A. Right.

Q. Assume in addition, that computations shows that the amount determined, the amount of final settlement is \$97,898.80.

559 Now assuming those figures, Sir, does the taxpayer save money or lose money as far as the Internal Revenue is concerned and if so, how much? A. On this assumption, if my mathematics are correct, there is a savings of \$46,565.93.

Q. All right, would you like to recheck them? I do not think they are correct. A. I started off with \$175,944.29.

Q. Yes, Sir. A. From that I subtract \$124,611.42.

Q. Why did you do that? A. You told me that is what -- I thought you said to deduct that from that.

Q. No, Sir. What I was saying was the \$175,000 was the amount originally claimed by the Internal Revenue but that was corrected by Internal Revenue to reflect excessive profits resulting in a figure of \$124,611.42. A. If that is claimed by the Government, okay.

Q. Then what would be the savings to the tax payer? A. Well from that I subtract \$97,898.75.

THE COURT: I think before you give him the 85 --

Q. (By Mr. Miller) All right. I think we will make it 898.80.

THE WITNESS: Your Honor, do I have to answer this question?

THE COURT: I really think he is close enough.

MR. MILLER: All right.

560 THE WITNESS: No, because I never saw an estimate that said amount claimed by the Government. This is the only reason I asked.

THE COURT: You have been produced as an expert here, therefore he may like to ask you hypothetical questions, just to test you.

THE WITNESS: The effective savings would be \$26,712.62.

* * * * *

BY MR. MILLER:

561 Q. I think you testified you used Defendant's Exhibit 15, which is a computation of income tax liability after excessive profits determination? Is that right, Mr. Sher? A. Yes, Sir.

Q. Now is that exhibit your source of information in your totals on column 3 which you have denominated, Repaid as a Result of Renegotiation? A. Yes, Sir.

Q. Now is it true Sir, that -- by the way did you read more than the top page or the totals, did you go through the computation itself in that exhibit? A. I went through to see if I could prove out the repaid as a result of renegotiation, and the only thing --

MR. MILLER: Pardon me.

Q. My question is whether you looked at more than a single page which has the results, as you had on column 1 exhibit or whether you looked at all of the columns in that exhibit? A. The single page didn't have that particular figure.

Q. So you looked through all the sheets? A. Right.

Q. Well now, looking through all of the exhibits and obtaining this 1943 repayment of excessive profits, \$32,052.67 for example, the computations sheets will clearly show that credit is being given by Internal Revenue for the amount of excessive profits, doesn't it? A. It does.

562 Q. That is true of all of the figures for the years 1943, 1944 and 1945 doesn't it? A. That is right.

Q. Would that be true as to total figures? A. That is right.

Q. Isn't it a fact that those same computations were given effect by Internal Revenue as to the income tax claimed, the deficiencies? A. That is where I got this information, yes.

Q. Your answer to the question then is yes? A. Yes.

* * * * *

563 THE COURT: If you want to ask him where he got the \$3,000 or \$32,000, all right.

Q. (By Mr. Miller) Mr. Sher, where did you obtain on page 2, your figure of \$41,064.83? A. That came from Mr. Amann's figures for income taxes. It is a letter dated March 8, 1954.

Q. Yes. You have a copy of that there? I have one here. I thought you had one. That is all right.

I will show you Plaintiff's Exhibit 37 which I think is the letter you referred to, is it not, Mr. Sher? A. Yes, Sir, that is the letter.

Q. Well could you indicate where you obtained the figure of \$41,000.64 from that information?

THE COURT: It wasn't 64 cents.

MR. MILLER: Pardon me, I am sorry.

Q. (By Mr. Miller) \$41,064.83? A. The \$41,064.83 I obtained from -- I stated in the letter 1943 tax liability would be approximately \$10,280.65; 1944, \$14,823.86; 1945, \$15,960.32.

Q. You assumed those figures were correct and accurate, did you? A. I took that assumption that since Mr. Amann did it, being a tax expert, I would assume they are substantial and I mentioned they are approximately correct. I accepted it.

Q. Were they approximately correct or taken by you to be correct? A. They were not taken by me to be accurate.

564 Q. I see. \$41,064.83 is merely an approximation? A. Yes, Sir.

Q. Would you take into consideration Mr. Amann the same tax expert noted on the second page of his letter, you will understand, of course there is no guarantee that the Internal Revenue Department will accept the additional items of expense which have been allowed by the Department of Justice.

Do you recall seeing that in the letter? A. I did.

Q. But you nevertheless took those figures as such in making your calculations, you took them exactly, didn't you, Mr. Sher? A. Yes.

Q. Didn't you realize also for those figures to be accurate at all the plaintiff relied upon having the family partnership allowed?

Did you realize that or not? A. I didn't go deeply into that problem.

Q. Beg your pardon. A. I didn't go deeply into that problem.

Q. Did you go into it at all? A. I only took the -- no, I didn't go into it at all, just took the figures from the way as prepared by Mr. Amann.

565 Q. You don't know whether the family partnership, as a matter of fact, was not allowed by the Department? A. No, I really don't know.

MR. MILLER: That is all, Your Honor.

* * * * *

571 MR. BERLOW: I think I better offer them one at a time. Offer Defendant's 14.

MR. MILLER: No objection.

THE COURT: Admitted.

(Document admitted in evidence)

MR. BERLOW: And 15.

MR. MILLER: No objection.

572 THE COURT: Admitted.

(Document admitted in evidence)

* * * * *

579 EDWARD BRADY

having been previously sworn was reminded he was still under oath took the stand, was examined, and testified further as follows:

DIRECT EXAMINATION

BY MR. DICKEY:

Q. Mr. Brady, did you ever see prior to the trial in the tax court, did you ever have a visit with Mr. Anthony and Mr. Tony Paletino? A. Yes, I did.

580 Q. Whereabouts? A. I visited Tony Paletino of Providence, Rhode Island.

Q. Did you write a memo on that meeting? A. Yes, I did. I wrote a memo to Mr. Casey.

Q. I will show you a copy of the memo and see if that refreshes your recollection of the visit. A. Yes, it does.

Q. Would you describe your visit with Mr. Paletino and approximately when it occurred? A. It was early in 1955 that I visited Providence, Rhode Island, with the specific purpose of seeing whether Mr. Paletino of Colonial Knife which is one of the companies which Mr. Edell had worked for during the years 1942 to 1945.

Q. Had you previously called Mr. Paletino on the telephone?

A. Yes, I had called him some time previously to make a definite date with him.

Q. Would you describe what occurred at that meeting? Did he agree to come and testify? A. Yes, Mr. Paletino agreed to come and testify.

I spent approximately 6 hours with him. In fact I had supper at his house that night.

581 Q. On that trip or any other trip did you see any other witnesses who subsequently appeared? A. Yes, I saw Hern and Owens. I believe the companies involved were Wiley Factory and Scott & Dower and Company.

Q. Did they also agree to come and testify? A. Yes, they did.

Q. Did you see anyone else who was a potential witness? A. Yes, I saw Mr. Fincklestein of Atlantic and Mr. Casey and myself after we got a description of Mr. Fincklestein's present health decided not to ask him to come as a witness.

Q. How many witnesses appeared at the trial? A. Six witnesses altogether.

Q. Those were two -- A. Two expert witnesses and four witnesses from the companies involved.

Q. Of the four witnesses involved how many company witnesses -- how many had you previously talked to? A. I had talked to all of them but only three were willing to come and testify.

Q. Which one was not willing to testify? A. Mr. Kay.

Q. Kay? A. Right.

Q. Who secured his presence? A. Mr. Edell.

582 Q. Had you talked to Mr. Kay? A. Yes, I did.

Q. At the initial hearing in New York were any or all of these gentlemen available at that time to testify? A. Yes, they were.

Q. Did there come a time when you excused them? A. Yes, I did.

Q. When did that occur? A. Either April the 30th or May 1st.

Q. April the 30th being what day of the week? A. That was Monday of the week of the Tax Court calendar.

Q. Was there a calendar call on that? A. Yes.

Q. Then the hearing went over to the next day? A. That is correct.

Q. What occurred on April 30th that allowed you to excuse the witnesses? A. Mr. Casey was ill so I explained to Judge Heron that the illness of Mr. Casey is that he will not be able to try the case this week. The week involved. And she said Mr. Leathers of the Department of Justice had a witness from Florida and he would like to put him on the stand the following day but that was all that could be done.

Q. Subsequent to the time, to this time were the witnesses subpoenaed you are referring to? A. No, they were not.

583 Q. To appear in Washington, D. C.? A. They were subpoenaed at the trial which was postponed from New York to Washington.

Q. Did you advise Mr. Edell they should be subpoenaed? A. Yes, I did.

Q. Did he arrange to have them served with subpoenas? A. I obtained subpoenas from the Tax Court and gave them to Mr. Edell and he delivered them.

Q. Mr. Brady, I hand you the letter of March, 8 1954 addressed to Mr. Edell from Mr. Amann, which is Plaintiff's Exhibit 37, the photostat copy. Have you seen the original of that letter? A. No, I have not.

Q. Did you ever see any copy of that letter until it was exhibited here in the Court Room the other day? A. I never saw this letter until yesterday, until yesterday.

THE COURT: What is the number of the Exhibit?

MR. DICKEY: Number 37, Your Honor.

THE COURT: Plaintiff's 37?

THE DEPUTY CLERK: Yes, Ma'am.

584 Q. Mr. Brady were you in the Court Room when Mr. Edell testified? A. Yes, I was.

Q. There was some discussion or some testimony by Mr. Edell with regard to double taxation in 1945 and 1946. Did you hear that? A. Yes, I did.

Q. Did Mr. Williams, was Mr. Williams the first person to discover this so-called double taxation? A. No, he was not.

Q. What person or office was the first to discover that? A. I really couldn't say what everybody knew about.

Q. And what was done about it? A. The simple thing that was done about it, it was put in the proper year, 1946.

Q. In your settlement with the Internal Revenue for the years 1943, 1944 and 1945, was this amount ever put into those years as far as your final settlement was concerned? A. No, it was not.

Q. Mr. Brady, when did you first meet Mr. Williams in connection with this case? A. 1957 or 1958.

Q. I hand you a memorandum addressed to Mr. W. J. Casey from Mr. E. J. Brady, with the date thereon, does that refresh your recollection as to the first time you met Mr. Williams in connection with this matter? A. That is correct.

585 Q. Does this memorandum show when you first met him? A. Yes.

Q. What was the date of your memorandum? A. January the 14th, 1958.

MR. DICKEY: Nothing further of this witness on rebuttal, Your Honor.

* * * * *

CROSS EXAMINATION

BY MR. BERLOW:

* * * * *

591 Q. You went up to see these witnesses, because you knew at that time the testimony of those witnesses was very important? A. The only way we could prove Mr. Edell wasn't a 5 percenter.

Q. Did you make any notes of the testimony that they gave you at that time? A. Yes, I made --

Q. Are those written notes here? A. Yes, Sir.

Q. Did you make any notes in your own handwriting before you had them typewritten? A. They were typed from my handwriting or I dictated them. I don't know which.

* * * * *

592 Q. And these documents that you are looking at now, do they refresh your recollection that you did in fact go see those witnesses? A. Oh, yes.

Q. Now if you testified you never saw the Amann letter that Mr. Dickey just exhibited to you, until it was exhibited in court? Is that right? A. That is correct.

Q. You did see the first letter, the first Amann letter that refers to the \$138,000 as being the renegotiation tax?

You did see that? A. Which one is that?

* * * * *

593 Q. Okay. I am referring to Defendant's 1 for identification, that letter, there is not any question about that. A. Oh yes, I have seen that, yes.

Q. Now I am calling your attention to the second sentence:

"I can't however at this time give you any tax figures although I hope to be able to do so the latter part of this week."

When you read that, did you make any inquiry where the tax figures were? A. No.

Q. Did you make any inquiry of Mr. Casey? A. No.

Q. To Mr. Edell? A. No, because the tax figures weren't important until the renegotiation was settled. That wouldn't be determined.

Q. Even though Mr. Amann said he was going to determine it, it could not be determined? A. That is correct.

Q. So it was your view Mr. Amann was incorrect in saying he could do it. A. That is so.

594 Q. And Mr. Amann in writing the letter of March 8, 1954 and doing it, it is your testimony that is incorrect as well, is it not?

A. Oh yes in line with the Internal Revenue Department.

* * * * *

REDIRECT EXAMINATION

BY MR. DICKEY

Q. Mr. Brady, there has been placed in evidence Plaintiff's Exhibit 32, a letter of November 21st, 1955 to Mr. Edell.

What does that show, Sir? A. That I was up in Worcester and I saw Jack Owens and Joe Hern and they were willing to testify.

Q. Mr. Berlow asked you, I think I am paraphrasing correctly, if the letter of March 8, 1954, which is Plaintiff's exhibit 37, which you said you had not seen until yesterday if that didn't, I think change your mind or Mr. Amann made the calculation and you said it didn't, is that correct? A. That is correct.

Q. Would you explain why Sir? A. After studying the case you have to realize that the tax problem which Mr. Edell faced could not be determined until the renegotiation case was settled one way or the other.

595 And I think the Internal Revenue Service agreed with our conclusion on that matter.

Q. Were the calculations that Mr. Amann made in here, \$10,280.65 for 1943 for tax deficiency; \$14,823.86 for 1944; and \$15,960.32 for 1945, made on any assumption? A. They were made on the assumption that the same settlement and the offer of compromise of the Department of Justice could be acceptable to Internal Revenue Service.

Q. Do you know of your own knowledge whether those same expense figures were available in the Internal Revenue Service? A. They were not accepted by the Internal Revenue Service.

MR. DICKEY: I have no further questions, Your Honor.

RECROSS EXAMINATION

BY MR. BERLOW:

Q. Do you remember the fee agreement between Mr. Edell and Mr. Casey, the same assumption was made, was it not, as to the renegotiation refund? A. I have no knowledge of that.

Q. Was the figure of \$183,000 used in the renegotiation agreement? A. The figure of \$183,000 to my knowledge was the offer, the best offer of the Department of Justice.

Q. And didn't Mr. Casey assume that figure in the agreement he had entered into with Mr. Edell? A. I can't answer that.

Q. Did you see that figure in the agreement, \$183,000. A. What agreement are you talking about?

Q. I am talking about -- first do you remember these agreements, they were talking about five days -- \$138,000 and then \$183,000.

Do you remember those agreements? A. I remember those agreements.

Q. Now do you know the agreements we are talking about? A. No we are talking about so many agreements that I am not sure what agreement you are talking about.

Q. I am just trying to save time, I am not trying to confuse you.

But, if I have to get it out, I will. I show you Plaintiff's Exhibit 9, is the figure \$183,000 used in that agreement? A. That is correct.

Q. It was assumed was it not, that offer, that was the best offer of Mr. Prentice? Is that right? A. Of the Department of Justice, yes.

Q. And Mr. Amann in his letter -- let's get that back -- the first letter from Mr. Amann, could I refer to it as that letter, refers to Defendant's 1? A. Right.

Q. That also assumed Mr. Prentice's offer of \$183,000, did it not? A. Mr. Amann assumed in his letter of February the 1st that the offer of the Justice Department would be acceptable by the Internal Revenue Service.

Q. And the offer was \$183,000, was it not? A. The offer was \$183,000 for excessive profits.

Q. Now assuming, taking the same assumptions, both of Mr. Casey and Mr. Amann, which they used, and following that assumption down through, didn't Mr. Amann then calculate the income tax that was due? A. In that letter there, yes.

MR. BERLOW: I have no further questions.

THE WITNESS: On the assumption he did.

* * * * *

WILLIAM J. CASEY

having been recalled as a witness in his own behalf, and having been reminded he was still under oath, resumed the stand, was examined, and testified further as follows:

598

DIRECT EXAMINATION

BY MR. MILLER

* * * * *

Q. Did you ever or frequently discuss with Mr. Edell, as he testified, \$138,000 contract or \$138,000 tax. A. I never talked about it.

599

Q. Did you see the Amann letter referred to, estimated tax liability of \$40,000? A. I never saw it.

Q. Which is Plaintiff's Exhibit 37, prior to seeing it in Court? A. I never saw it until I saw it in Court yesterday and I haven't read it yet.

THE COURT: In this agreement which Mr. Edell said was torn up, was there any reference in that, this original agreement of the \$138,000?

THE WITNESS: There was no reference in it at all, if such an original contract or agreement existed, which I don't believe it did. The only reference was to the deficiencies and the assessment which the Government was making, for the tax deficiency and the Department of Justice offer.

I made an agreement to contest those deficiencies and I made it on a contingent fee basis, based on those figures.

Q. (By Mr. Miller) Did you ever tell Mr. Edell you could not and would not represent him until Mr. Amann had been paid and withdrawn from representation? A. Yes, I did.

THE DEPUTY CLERK: Plaintiff's Exhibit 49 and Plaintiff's Exhibit 50 marked for identification. (Documents marked for identification).

600 MR. MILLER: Your Honor, although I have Plaintiff's Exhibit 49 marked, I find it is a duplicate or a copy of Plaintiff's Exhibit 12, which is in evidence and I will withdraw 49.

THE COURT: Very well.

Q. (By Mr. Miller) When did Mr. Amann withdraw from the case thereby enabling you to start representing Mr. Edell? A. Mr. Amann called me around the 25th or 26th of July and told me he was getting out and he had settled with Mr. Edell and on the date of July 27th he sent me such papers as he had.

Q. Had he withdrawn from the case on or before July the 15th of 1954? A. No, he had not.

Q. I will hand you Plaintiff's Exhibit 4 and ask you to tell us what it says, if anything, regarding his withdrawal from the case.

A. On July the 21st, Mr. Amann addressed a letter to Mr. Edell and the last paragraph of that letter says: Offer to continue to represent you --

* * * * *

A. Our offer to continue to represent you upon the terms set forth in my letter of May 14th is hereby withdrawn. Signed by W. S. Amann.

601 That was brought to my attention around the 25th of July.

Q. Was that the first time you were informed Mr. Amann had withdrawn? Yes.

Q. I will hand you also -- A. Mr. Edell told me he made the payments that Mr. Amann demanded in this letter, and that is when I considered it settled with Mr. Amann.

Q. I will hand you Plaintiff's Exhibit 50, which is dated July 27th, 1954, being a letter from Mr. Amann to you and indicating what documents from the files were being sent to you.

I will ask you when you received them and when you received the files? A. It was dated July 27th and there is a note that my secretary made on there, received 7/28/54. I assume that to be correct.

Q. And it wasn't received by you on or before July 15th at any rate? A. No, it was not.

Q. Did Mr. Edell ever tell you he had been advised by Mr. Williams or anyone else that he owed you nothing? A. No, he did not.

602 Q. Did he ever, following a determination by the Tax Court of the renegotiation matter, inform you that he felt he didn't owe you, or wasn't going to pay you. A. He never so stated. But his actions, by his actions he did not pay me, but he never stated that he wasn't going to pay me.

Q. Was there any such conversation had with any member of your office, including Mr. Brady? A. Not to my knowledge. It was never reported to me.

Q. Did Mr. Edell ever have conversation with you after you had billed him for fees, in which he said that he didn't owe you fees in effect, and you agreed with him, and you said you had to improve on Mr. Amann's offer of \$40,000, and you said that is true?

You heard the testimony. Is that true? A. There was never any such conversation.

Q. Were your fees ever contingent upon Mr. Amann's determination of \$40,000 or any other amount? A. Mr. Amann's calculations played no part whatsoever in the agreement I made with Mr. Edell.

It was based entirely on my contesting the Government's deficiencies and the agreement was based on the amount the Government claims both on the tax case and in the renegotiation.

603 Q. After you had discussions and correspondence with Mr. Amann, after being introduced by Mr. Edell, did you have lunch with Mr. Amann and Mr. Edell? A. Yes, I did.

Q. Was that after July 15, 1954? A. It was in May of 1954 in Washington.

Q. Where did it occur in Washington? A. At the Statler Hotel.

Q. At the Mayflower Hotel? A. At the Statler Hotel.

MR. MILLER: I think that is all, Your Honor.

THE COURT: Mr. Berlow.

CROSS EXAMINATION

BY MR. BERLOW:

Q. And did there come a time after Mr. Edell got your bill for \$10,000 in the renegotiation case when he told you he would not pay that? A. No, he didn't say he would not pay it. He said, let it go until the tax thing is settled and we will settle the entire matter once and for all. And I acquiesced in the request on his part. I said okay.

Q. But in fact he did owe you that money at that time, did he not?

A. I thought he had agreed, but I wasn't going to make an issue of it.

604 The \$2500 retainer was applicable against the two amounts. I was willing to let it go until the tax matter was settled.

Q. Actually he owed you about \$7400 at that time? A. Yes.

Q. Did you subtract the retainer? A. No doubt about that.

Q. For the period of a year and a half you never made any request for him to pay that, did you? A. Yes, I was very generous with Mr. Edell.

Q. Was it generosity, or was it the fact that you did understand that if there was a loss to the client on the income tax matter that it would have to be deducted from the renegotiation matter? A. Mr. Berlow --

MR. BERLOW: Answer that question yes or no. A. That was not the understanding.

Q. That was not the understanding? A. If it wasn't generosity, it was something else. I say it was generosity.

Q. And it had nothing to do with the fact in the event you were unsuccessful? A. Nothing. I couldn't be unsuccessful. Nothing at all, because the demand -- my income tax agreement was based on the
605 Government's demand, and that demand had already been reduced. I couldn't do any worse than that. There was no possibility of being

unsuccessful in the income tax matter.

Q. Do you mean when you stipulated to the expenses in the Tax Court that that was res judicata and that -- A. No. --

Q. At the time you sent the bill in the renegotiation matter, had the deficiencies been reduced? A. No, the tax calculation had not been made at that time. But you misunderstood my previous answer.

Q. I don't understand it. A. I said there was no possibility of my holding anything on the income tax matter because my agreement was based on the deficiency which the Government had asserted. That was fixed and I can only improve on it.

Q. You couldn't lose on this? A. I was working to improve it. My conversation was based on the degree to which I was able to improve it. I couldn't lose on it.

Q. There was no risk involved at all that you would worsen the clients position? A. No, there was no risk involved.

* * * * *

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MR. BERLOW: I will withdraw the question.

Q. (By Mr. Berlow) I will ask you this, you said that the agreement with Mr. Edell on the income tax matter was based upon the deficiency proposed, is that correct? A. Yes.

Q. And did you explain to Mr. Edell at the time that the contract was entered into, that in the event any expenses were allowed in the income tax matter, that then you would be entitled to a fee representing a percentage of the taxation? A. Oh, yes. They explained that to me, that there was no expenses that had been allowed and I explained that to him.

It was understood clearly by both.

Q. Did you also explain to Mr. Edell at that time, that insofar as this renegotiation agreement was concerned, that the \$183,000 figure did contain an allowance for expenses? A. I don't know that I explained that, I think it was self-evident. Mr. Edell knew it and I knew it.

Q. Did you explain to him why the two agreements were different then in that respect, why one contained the assumption there would be some expenses deducted, and the other did not contain the same assumption? A. Because at the time I took on the case, the Government

607 was making a claim of \$183,000 on renegotiation, and was making a claim of \$175,000 on tax deficiencies, and my agreement was based on the extent to which I would be able to improve, to reduce those claims.

Q. And the assumption was that your improvement was based upon any expenses they may have excepted in income tax. That your improvement insofar as renegotiation, in that aspect there were stipulated expenses in the proposal on which that was based? A. There were many, many matters, and many, many factors that could result in the reduction of the renegotiation claim. These expenses were stipulated because I didn't think it would be possible to prove them. Therefore it was stipulated.

Q. So your contract in renegotiation pre-supposed \$64,000 in expenses and you, your contract insofar as income tax was concerned, pre-supposed zero expenses? A. That is correct, if you want to say pre-supposed.

Q. Did there come a time when you did sign an agreement with Mr. Edell on the renegotiation matter, which had as the offer the figure of \$138,000 in there? A. That was a mistake in a figure.

Q. But you signed that document? A. Yes, I did.

608 Q. And before you signed it, you read it? A. I assume so.

Q. And then you mailed it to Mr. Edell? A. Well, I forget whether he took it with him or whether I mailed it to him.

But he had a copy and I had a copy.

Q. And you took it back and called him at some later date and told him that the figures had been transposed? A. I said the figures had been transposed, yes.

* * * * *

Q. There is no question but that you did have Mr. Amann's exhibit that had the figure of \$135,580 something in it? A. Yes, that

agreement -- that estimate was among the papers I had.

Q. The \$137,000? A. Yes, that estimate was among the papers that I had.

Q. Did you at any time explain to Mr. Edell that the \$138,000 figure that you wanted changed, was within a few hundred dollars of the figure that was in Mr. Amann's agreement? A. Yes, I did. I wrote a letter telling him it was \$137,000, \$137,000 figure kicking around in the matter, and then I explained the basis on which the agreement had been arrived at and I spelled that out in my letter to Mr. Edell which I sent to him at the time I sent him the corrected agreement.

Q. By that time, of course, all of Mr. Edell's documents including all of this correspondence with Pittman and Roberts that you have introduced and all of Mr. Amann's with Mr. Edell, all that correspondence had been delivered to you? A. Such as it was, was in my office at that time. Some was in Mr. Stovall's office but I had what had been delivered, yes.

Q. With one exception that was defendant's exhibit --? A. I don't know what other exception there might have been. I can't say with one exception. I can testify that letter was not included in the papers which were sent to me.

Q. But all of the documents that have been introduced in this case there are --? A. The answer to that is yes.

* * * * *

Q. Now of course the document I was going to exclude from my question, any documents after July, the date of the receipt, which was July 27th. That was the day Mr. Amann delivered to you all of the documents that he had? Is that correct? A. That is right, yes.

Q. Now are there any documents that were dated before that time other than the one Mr. Brady says he did not see and you said you didn't see?

Are there any documents dated before that time that were not in the material, the things that were delivered to you by Mr. Amann?

A. Do you mean all those things that have been introduced here?

Q. Yes? A. As far as I know there were no other documents that I hadn't seen. That document had never been referred to in any correspondence that went on in this matter. There was no correspondence with reference to that figure in that document and I never saw it until I came to Court yesterday.

Q. Let us take the one that immediately preceded it, that is Defendant's Exhibit 1. Now Mr. Amann didn't have the original of that because that is addressed to Mr. Edell and the original of that would have been mailed to Mr. Edell, but you did have, Mr. Amann did retain
611 the carbon copy, did he not? A. I think we got this paper from Mr. Edell the first time I saw him.

Q. But Mr. Edell delivered to you the first paper having to do with renegotiation and it says there that Mr. Amann will prepare another letter on the tax matter. And did you ask Mr. Edell where it was? A. No, I didn't ask for it. I did not consider it important. It was merely Mr. Amann's calculations made on a set of hypothetical figures.

Q. And your whole contract was based on hypothetical figures? A. No, it wasn't. My whole contract was based on the deficiency asserted by the Internal Revenue Service.

Q. No, but your renegotiation -- A. That was based on an offer made by the Department of Justice. There was nothing hypothetical about it.

Q. Mr. Amann's calculations insofar as income tax was concerned were based on exactly the same offer, were they not? A. I don't know. They were based on assumptions which I considered had no validity if I were going to contest the offer. These assumptions had no validity. I knew they would disappear.

Q. And your and Mr. Edell's contract was based on that?
612 But you and Mr. Edell were contracting on the assumption that offer was in existence? A. We contracted on the basis of my being

able to improve that offer and that is why Mr. Edell retained me.

Q. That is right. As a matter of fact, both you and Mr. Edell signed that agreement and for all you know the Department of Justice may have rejected it right then? It may have been withdrawn? A. I still considered it was the best offer that had been made to Mr. Edell, and I undertook to work out a settlement either in Court or otherwise, which would be better than that offer.

Q. That is what Mr. Edell had in mind too was it not? A. I believe he did.

Q. But your testimony is thus far that he had that in mind only insofar as the renegotiation was concerned but not insofar as the income tax was concerned? A. No, sir. There was no offer of settlement. No adjustment on the income tax. All we had was the deficiency asserted by the Internal Revenue Service which pre-supposed no expense at all. I believe that to be the case. I am not sure.

MR. BERLOW: I have no further questions, Your Honor, please.

MR. MILLER: I will offer in evidence Plaintiff's Exhibit 50 for identification.

613. That is all, Mr. Casey.

THE WITNESS: Thank you. (Whereupon the witness withdrew from the witness stand and resumed his seat in the court room.)

THE COURT: Plaintiff's Exhibit 50 for Identification is admitted in evidence.

(Document admitted in evidence.)

(The Court recessed at 5:15 until 10:00 the following morning.)

* * * * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE
U.S. TAX COURT, May 1, 1956

16 contracts with the clients, and in addition to that eight and a half million dollars to which it was compensated, it handled another million and a half dollars, another twenty per cent worth of determination settlements in which it rendered services and sustained expense in winding up business which it had developed and initiated and for which it received no compensation at all because under its contracts with its clients it was entitled to no compensation except as, if and when delivery of goods was finally made and accepted.

You see no compensation on sales and on these terminated contracts. It had rendered the service of giving these companies ought to be able to handle contracts, services, execution of the contracts. Then because it was terminated and no deliveries were made except termination payments, it became entitled to no compensation payments but nevertheless it did handle business and assist its clients in working through the somewhat complicated business of determining the business awards and closing up its war business.

That, Your Honor, is what we expect the evidence to sustain and in light of which we would like to have the court review and evaluate the evidence.

THE COURT: Going back to the supplementary stipulation, Mr. Leathers, I am going to ask you to try to recall something about our decisions in the renegotiation cases. As you know, we are not hearing many of these cases now and have not been for two or three
17 years, although we still have a desk file of one hundred of these cases pending in the court. The statutory notices with which we deal in the renegotiation cases are different than the statutory notices that give rise to the Federal tax precedents in this court. I must go into the specific things with you while you are here because

they take up time later, and they are rather formal matters which counsel should take care of for the court anyway. It saves the time in the long run if we find out some of these things which would have to be contended to later.

Now if the court should sustain the Respondent on the first issue and hold that the partnership was a subcontractor, then we would have to go into the matter of the kind of decision to be entered if we also held that some of the profits in each of the three years were excessive. Well, don't we enter a separate decision for each year?

MR. LEATHERS: Yes.

THE COURT: Don't we say for the year 1943 the Petitioner realized excessive profits in a certain amount?

MR. LEATHERS: Yes, I think that is correct, Your Honor.

THE COURT: How would I handle a total sum such as you have in Paragraph 1, that the court may enter determination for excessive profits totalling \$240,000? That would be for three years, would it not?

EXCERPTS FROM U.S. TAX COURT REPORTS

601

HARRY EDELL and LEWIS H. EDELL, a Copartnership,
Doing Business as HARRY EDELL, Petitioner, v.
UNITED STATES OF AMERICA, Respondent.

Docket No. 882-R. Filed June 10, 1957.

1. Held, (a) that contracts between petitioner and each of its several principals provided that petitioner would sell or attempt to sell products of a principal to a department of the Government, and would solicit, attempt to procure, and procure Government contracts for a principal; and (b) that under each of such contracts petitioner's compensation for its services was contingent upon the procurement of a Government contract; and that, therefore, (c) each of the contracts between petitioner and its principals was a subcontract within the provisions of section 403 (a) (5) (b) (i) and (ii) of the Renegotiation Act of 1942, as amended, and the commissions received by petitioner under each of such contracts are subject to renegotiation.

2. The amount of excessive profits for each of the years 1943, 1944, and 1945 is determined.

William J. Casey, Esq., and Edward J. Brady, Esq., for the petitioner.

Harland F. Leathers, Esq., and James H. Prentice, Esq., for the respondent.

The respondent determined by orders dated June 9, 1949, that the petitioner realized excessive profits for the years 1943, 1944, and 1945, derived from contracts and subcontracts subject to renegotiation in the amounts of \$25,735, \$85,541, and \$170,377, respectively, or a total of \$281,653 for the 3 years. Respondent now claims that petitioner realized excessive profits for the years 1943, 1944, and 1945, in the amounts of \$36,000, \$84,000, and \$120,000, or a total of \$240,000 for the 3 years.

Petitioner has abandoned some of the issues presented by the pleadings. The issues remaining for decision are: (1) Whether

602 petitioner, during the years 1943, 1944, and 1945, was a party to any subcontracts as defined by section 403 (a) (5) (B) of the Renegotiation Act of 1942, as amended, so as to make its profits under such arrangements subject to renegotiation. (2) If any of the earnings of petitioner for any of the years involved are subject to renegotiation, what amount of such earnings constituted excessive profits, if any.

FINDINGS OF FACT

On December 22, 1942, Harry Edell and his brother, Lewis Edell, formed a partnership, hereinafter called the partnership, under a written agreement, which began business on January 1, 1943, and had an office in New York City. At that time, Harry Edell lived in New York City and Lewis Edell lived in Brooklyn. The terms of the partnership agreement and other facts relating to the partnership are set forth hereinafter. Harry Edell was the more active member of the partnership and its formation was his idea. He is referred to hereinafter as Edell.

Prior to 1942, Harry Edell was engaged in various pursuits, as follows:

For 2 years prior to 1918, he was a field manager for the General Petroleum Company of Texas, which was partly owned by members of his family. In 1918, he went to New York City where he was associated with a hat factory as assistant manager, and later as general manager, until 1920 when the business was dissolved. He then became factory manager of the Botany Straw Works in New York City until that business was dissolved in 1923. For the next 10 years, he was part owner, vice president, and general manager of the Herbel Hat Company until it was dissolved in 1934. Thereafter, until sometime in 1936, he was in the business of manufacturing women's hats under the name of the Harry Edell Company. From sometime in 1936 until about 1937, he was employed by the Ferber Millinery Company, for whom he arranged the leases of millinery departments in department stores in various parts of the country. In 1937, he went into the

millinery manufacturing business with another, doing business under the name of the Crickett-Rudley Corporation. On January 31, 1938, Harry Edell was adjudged bankrupt, on his own petition. He was discharged from bankruptcy on November 22, 1938. The trustee in bankruptcy filed a return of no assets, and the case was closed on June 17, 1940. In 1939, he suffered a nervous breakdown, and he was inactive until 1942, during which time he used the proceeds of some health insurance policies for his support.

On his income tax return for 1938, Harry Edell reported gross income in the amount of \$5,150, which represented his salary from the Ferber Millinery Company.

603 Harry Edell was not an engineer; he had no technical training; he had no formal education beyond high school except for incidental courses in public speaking and some other subjects.

Early in 1942, Harry Edell was able to resume business activities. In an effort to help Edell develop some new business pursuits, two friends took him to the Philadelphia Quartermaster Depot to acquaint him with Government facilities which had been established to help manufacturers to enter war production. Also, they introduced him to Lawrence Dodge of the Dodge Textile Company in Providence, Rhode Island.

Edell entered into a contract with Dodge in early 1942, whereby Edell was to perform certain services for Dodge which are described hereinafter. Edell performed services for Dodge under this contract during 1942.

On March 30, 1942, Edell entered into an agreement with the Atlantic Knitting Company, Inc., of Providence, Rhode Island, hereinafter called Atlantic Knitting. The terms of this agreement are set forth hereinafter. Edell performed services for Atlantic Knitting during 1942.

Also, in 1942, Edell entered into an agreement with the Supply Manufacturing Company, New York, New York, hereinafter called Supply, the terms of which are set forth hereinafter. Edell performed services during 1942 under this contract.

During 1942, Edell received payments from Dodge, Atlantic Knitting, and Supply, in the total amount of \$16,321.78 which were reported in his income tax return for 1942, as follows:

Dodge Textile Company - - - - -	\$10,981.88
Atlantic Knitting Company - - - - -	3,400.00
Supply Manufacturing Company - - - - -	<u>1,939.90</u>
Total - - - - -	16,321.78
Expenses - - - - -	<u>8,500.00</u>
Net income - - - - -	7,821.78

When Edell and his brother created a partnership on December 22, 1942, Edell assigned his contracts with Dodge, Atlantic Knitting, and Supply, to the partnership; he did not contribute any cash to the capital of the partnership. Lewis Edell loaned \$5,000 to the partnership. This amount constituted the capital of the partnership.

In 1942 and thereafter, during 1943, 1944, and 1945, Lewis Edell, hereinafter called Lewis, was employed as a sales agent for several sportswear manufacturing concerns. In his income tax returns for 1941 and 1942, he reported gross income in the amounts of \$1,960 and \$1,100 respectively. Lewis died in 1949. According, there is no testimony of Lewis in the record of this case.

604 The material parts of the Edell partnership agreement dated December 22, 1942, which was executed by Harry and Lewis Edell, are as follows:

Whereas, Harry has for some time past been in the business of representing manufacturers in negotiations for contracts with United States Government and Departments thereof, and assisting said manufacturers in performing said contracts, and

Whereas, Harry is in need of assistance to conduct and enlarge said business and is also in need of additional finance for the same, and

Whereas, it is the desire of both parties to form a partnership to carry on the business formerly conducted by Harry:

Now Therefore, It is Mutually Agreed as Follows:

FIRST: That the parties hereto shall, as partners, engage in the business of representing manufacturers and suppliers of merchandise in the preparation of invitations and negotiations for contracts between said manufacturers and suppliers and the United States Government and departments thereof and for its allies, and assisting said manufacturers in performing said contracts.

SECOND: That the partnership shall continue doing business under the name of Harry Edell and the office or place for which said business shall be conducted shall be at 66 Leonard Street, Borough of Manhattan, City of New York.

THIRD: Harry hereby assigns to the partnership, the following written contracts which were heretofore made with him personally:

1. Supply Manufacturing Co. Inc. - 34 University Place, N.Y., dated May 11th, 1942;

2. Atlantic Knitting Company, Inc. - 75 Eagle Street, Providence, Rhode Island, dated March 30th, 1942;

3. One-half interest in agreement made with L.M.R.V. Corp. - 48 East 21st St., N.Y. dated December 3rd. 1942.

All contracts to be obtained in the future for convenience shall be made out in the name of Harry Edell individually. However, it is understood and agreed that the said Harry Edell upon obtaining said contract shall be acting as the agent of the partnership, and the said contracts shall enure to the benefit of the partnership immediately upon the procurement thereof by Harry.

FOURTH: That Lewis shall contribute to the partnership the sum of \$5,000.00 in cash, which shall be used by the partnership for the promotion of the business, which sum however shall be considered a loan to the partnership, and shall be repaid to Lewis as hereinafter provided in Paragraph Eighth herein.

FIFTH: That all checks, notes, cash or monies to be received by the partnership, shall be received in the name of Harry Edell individually and the same shall be held by him on behalf of the partnership. That the said monies shall be kept by said Harry Edell, separate and apart from any of his personal funds until the distribution thereof as hereinafter provided. That in the event the partners decide to open a bank account, the same shall be opened in the name of Harry Edell, but all funds deposited therein shall be considered the funds of the partnership and the said Harry shall act as trustee thereof on behalf of the partnership.

* * * * *

SEVENTH: (a) That full and accurate accounts of the transactions of the partnership shall be kept in proper books; and each party shall cause to be entered into the said partnership books, a full and accurate account of all his transactions in behalf of the partnership;

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(b) That the books of the partnership shall be kept at the place of business of the partnership, and each party shall, at all times, have access to and may inspect and copy any of them.

EIGHTH: That the profits and losses shall be divided as follows:

(a) As soon as there are sufficient profits in the partnership funds, after the deduction of all expenses of the business, the \$5,000.00 loan made by Lewis shall be repaid to him.

(b) After deduction of all expenses incurred in the operation of the business and the repayment of the \$5,000.00 loan to Lewis, the first \$10,000.00 in profits shall be paid to Harry.

(c) After the aforementioned payments, all net profits or net losses shall be divided equally between the parties hereto and the account of each shall be credited or debited as the case may be for his proportionate share thereof.

(d) Division of profits or apportionment of losses shall be made periodically upon mutual agreement of the parties.

NINTH: That the term of the partnership shall begin on the 1st day of January 1943, and shall terminate six months after the war is ended.

TENTH: That, at the termination of this partnership by the expiration of its term, or by reason of any other causes, the assets, liabilities and income, both gross and net, shall be ascertained, the debts of the partnership shall be discharged, all remaining assets shall be reduced to cash, and this cash shall be distributed to the partners in accordance with their respective capital accounts.

During the years involved, 1943-1945, and also during 1946, practically all of the work done for the Edell partnership was performed by Harry Edell; Lewis' services were minor, if not negligible.

At the end of 1942, Harry Edell was in contact with four corset manufacturing companies which wished to enter war production. Edell suggested that the four companies organize a fifth company, to be known as the L.M.R.V. Corporation, with a separate factory to be devoted to production of goods and materials for the Government, i.e., having a war-end use, and that each of the existing four companies contribute a nucleus of machinery and labor to the new company. The suggestion was carried out. Edell then entered into a contract with L.M.R.V., which is referred to hereinafter. Edell received no compensation from L.M.R.V. in 1942.

During either 1943, or 1944, or 1945, Edell, for the partnership, made arrangements with other corporations. Accordingly, services were performed for the following corporations during 1943-1945, and Edell received payments from each corporation, all of which are involved under the issues presented:

1. Dodge Textile Company	Providence, Rhode Island
2. Atlantic Knitting Company	Providence, Rhode Island
3. Supply Manufacturing Company	New York, New York
4. L.M.R.V. Company	New York, New York
5. Artex-Green Corporation	Long Island, New York
6. Colonial Knife Company	Providence, Rhode Island
7. Wiley-Bickford-Sweet Company	Worcester, Massachusetts
8. Brewer & Company	Worcester, Massachusetts

606 Some services were performed for an additional concern, William Glucken & Company, in New York City, but the parties are agreed that compensation received by petitioner from this corporation represents income which is not subject to renegotiation.

For the years 1943, 1944, and 1945, the partnership filed Federal partnership returns, on a cash basis, in which were reported the amounts received by the partnership from various ones of the companies listed above, as follows:

<u>Year</u>	<u>Gross receipts</u>
1943 - - - - -	\$59,392.54
1944 - - - - -	142,546.08
1945 - - - - -	<u>161,539.91</u>
Total - - - - -	363,478.53

In addition, petitioner received, after 1945, from various ones of the companies listed above, amounts aggregating \$65,000, less expense of \$30,000, or a net amount of \$35,000, which sum was attributable to services rendered during the years 1943-1945, inclusive.

During the years in question, the partnership had only one employee, Harry Edell's wife, who acted as his secretary. She received a salary of \$4,000 per year.

Reference had been made above to the fact that in 1942, Edell entered into agreements with Dodge, Atlantic Knitting, and Supply, which were assigned to the Edell partnership, and to the fact that after 1942, the partnership, through Edell, entered into agreements with five other corporations, namely, L.M.R.V., Artex-Green Corporation, Colonial Knife Company, Wiley-Bickford-Sweet Company, and Brewer & Company. Before setting forth the terms of the agreements with each one of the eight corporations, it is appropriate to state, in general and briefly, what the peacetime business of each company was.

Prior to entering into agreements with Edell or the partnership, none of the eight companies listed above had obtained any contracts for production of goods having a war-end use, except that Colonial Knife had produced incendiary fuses under a subcontract, but this subcontract proved to be unprofitable, because Colonial Knife was not properly equipped for producing incendiary fuses. The prewar business of each of the eight companies was as follows: Dodge manufactured women's housedresses; Atlantic Knitting produced knitted cloth for the ladies' garment trade; Supply serviced shoe manufacturers by cutting leather into strips; L.M.R.V. was a new company formed by four corset manufacturing concerns; Artex-Green manufactured venetian blinds; Colonial Knife manufactured small jackknives and metal novelties; Wiley-Bickford manufactured ladies' slippers; and Brewer manufactured pharmaceuticals, candy, and abdominal belts.

607 The record does not show how Edell originally made contact with each of the eight companies, but it appears that initially he contacted some of them, and that some of them initially contacted him. Prior to entering into agreements with Edell or the partnership, all of the companies were desirous of obtaining contracts for production

of goods having a war-end use, because they could not obtain Government priorities for the materials and labor which they required to remain in full production, unless they were engaged in the production of products for the Government. Some of the companies had tried to obtain Government contracts, but their efforts had been unsuccessful. Prior to making contracts with petitioner, the corporations involved here apparently had not acquired the experience or the assurance to deal directly with representatives of the Government for the purpose of obtaining Government contracts. They were small business concerns and they were faced with the necessity of converting their plants so as to produce other products, as well as with the problem of obtaining materials. The services which Edell offered the companies included obtaining information from Government representatives, preparing bids, and carrying on dealings on their behalf, as their representative. The companies entered into agreements with petitioner through Edell because they believed that he could obtain Government contracts for them.

As has been noted above, three of the agreements under which payments were made to the partnership, those with Dodge, Atlantic Knitting, and Supply, were made by Edell in 1942. The partnership performed services for these three corporations; it appears that it received payments from these three corporations in 1943 only, and not in 1944 or 1945. The partnership entered into agreements with L.M.R.V., Artex-Green, Wiley-Bickford, and Brewer during 1943, and performed services for these four corporations. It appears that the partnership received payments from these four companies during 1943, 1944, and 1945. The partnership entered into an agreement with Colonial Knife in 1943. It appears that it performed services for and received payments from that corporation during 1944 and 1945.^{1/}

^{1/} Exhibit D, attached to the petition, lists the corporations from which the partnership received payments in each of the years 1943-1945, inclusive. The partnership was unable to produce its books and records during the trial of this case. Harry Edell testified about many matters from memory. Therefore the record is not exact about some details such as all of the years in which payments were received.

Each of the eight corporations, listed above, which entered into agreements with Edell, for the partnership, converted its plant to enable it to produce goods desired by agencies of the Government, and each received contracts from the Government under which goods were produced. Under such Government contracts, the corporation

608 made articles and goods as follows: Dodge converted its plant to make and made mattress covers, pillow cases, butchers' aprons, bandoleers, and insect bars. Atlantic made knitted cloth for linings of Army overcoats, for gloves, and for blankets. Supply made dufflebags, medical kits, and a machine kit. L.M.R.V. made mattress covers and sailor hats. Artex made mattress covers, dufflebags, and a non-inflammable wastepaper basket for use in houses built for Navy Yard workers. Colonial made a giant jackknife which was used by the Air Corps and was part of the equipment in the so-called Knutson Vest, and a hunting knife which was used by the Navy. Wiley-Bickford-Sweet made parkas, jungle hammocks, sleeping bags, clothing bags, life preservers, and insect bars. Brewer & Company made abdominal belts, antibiotics, multiple-vitamin capsules, and hard candies.

Under each agreement with each of the eight companies, the partnership was to be paid, and was in fact paid, commissions varying from 2 1/2 per cent to 5 per cent of the amounts of sales by the companies to the Government under Government contracts and subcontracts. A letter from Colonial Knife to Edell dated January 25, 1943, stating the terms of its understanding with the partnership, contained the following provisions: "Your compensation for all of these services will be an amount equal to 5% of the deliveries made on orders received by us from the governmental agencies." A memorandum of agreement between the partnership and each of the other companies contained a substantially similar provision. Under each agreement, the partnership was not to receive payment of any amount unless Government contracts or subcontracts were awarded to the company; the amounts payable to the partnership under the agreements were

dependent upon the amount of such Government contracts and sub-contracts.

Some of the agreements provided for advances to be paid to the partnership, but only Wiley-Bickford and Brewer in fact paid the partnership any advances. Wiley-Bickford paid advances to the partnership in the amount of \$50 per week throughout 1943-1945, inclusive, and Brewer paid advances in the amount of \$50 to the partnership from time to time during 1943 and 1944. However, the total amounts which the partnership received from Wiley-Bickford and Brewer were determined on the basis of a fixed percentage of the payments received by Wiley-Bickford and Brewer from the Government.

Except for the advances referred to above, the partnership did not receive any payments from any of the eight companies until after Government contracts had been awarded to the companies and deliveries had been made to and accepted by the Government and payment had been received by a company from the Government. Each company then paid the partnership a fixed percentage of the payments it had received from the Government.

609 Commissions were paid to the petitioner on all sales made by its principals to the Government, whether the petitioner actually procured the sales contracts or not.

Under all of its agreements with the eight companies, the petitioner was not reimbursed for any traveling or other expenses.

Each agreement which the partnership made with the eight companies provided that Edell was to render a variety of services to the companies, such as: To secure comparative information of previous bids submitted to the Government by competitors for similar products; to endeavor to secure special priorities when needed; to assist in the preparation of material needed for the negotiation, or renegotiation, of contracts with the Government, and the termination thereof; to assist in research and development of products requested by or suitable for Government agencies; to service all orders which the

companies might secure from Government agencies; to assist in preparing and securing technical analyses of costs; to assist in locating sources of supplies for both materials and packages and in securing the same; to assist in securing reinspection, laboratory tests, and disposal of any materials furnished which might be rejected for any reason; and to expedite payment of invoices submitted. Edell was given the right to represent the companies in various Government agencies, and in the case of some of the companies, in all Government agencies.

Edell, acting for petitioner, procured at least one Government contract, or subcontract, for each of the eight companies listed above. He carried on a number of activities in soliciting and procuring such contracts, acting as a representative of the companies. He advised his principals of the products the Government wanted. His activities led to the issuance of invitations to his principals to bid on Government contracts. He also negotiated the terms of contracts between his principals and Government agencies.

Examples of Edell's activities on behalf of each of the eight clients of petitioner are as follows: On November 10, 1942, Edell wrote to Navy Ordnance, on behalf of Supply, in part, as follows:

Enclosed please find break-down of our costs for manufacturing of Poncho Type 2.

We are desirous of negotiating this contract with you and feel you might be interested in its actual cost.

On July 5, 1942, Edell wrote to Dodge, in part, as follows:

This confirms my telephone report to you of my negotiations held yesterday July 4th, with the Navy officials, regarding your bid for Neg 4446 (Mattress Covers).

610 On July 19, 1942, Edell wrote to Dodge, in part, as follows:

As per my telephone conversation with you from Philadelphia yesterday (July 18th), please be advised that Frankford Arsenal through Mr. Van Dyke, authorized me to have you manufacture 100,000 additional bandoleers.

On October 6, 1942, Edell wrote to Dodge, in part, as follows:

Also relative to our previous conversation, please advise me if you are ready to accept an increase in your bandoleer production, as arrangements for this additional award has been made by me. As I mentioned to you last Saturday, it is important that you accept this business immediately. [Emphasis added.]

On October 30, 1942, Edell wrote to Dodge, in part, as follows:

There also might be a possibility of my negotiating an award for you prior to November 18th, if you advise me of your desires at once.

On October 30, 1942, Edell wrote to Dodge, in part, as follows:

Philadelphia Quarter Master Depot are interested in securing bids on 425,000 Aprons, B., B & C W/BiB same as you are making for them at present. Bids must be presented before November 18, 1942.

On November 6, 1942, Edell wrote to Dodge, in part, as follows:

Please be advised that the Navy is interested in securing bids on 3,000,000 mattress covers, Type A. Bids must be returned by November 17th. Manufacturer must provide all materials.

On May 26, 1943, Edell wrote to Ravenna Ordnance Plant, on behalf of Dodge, in part, as follows:

We are manufacturing bandoleers of the N 1 and M 1906 type for the Frankford Arsenal. Would you kindly advise us if we can serve you also in the like fashion.

On August 7, 1943, Edell wrote to the Jeffersonville Quartermaster Depot, on behalf of Artex-Green, in part, as follows:

Will you kindly place us on your list of invitations to bid on the following items:

On October 6, 1943, Artex-Green wrote to Edell, in part, as follows:

I mention this because it is my understanding on your next Washington trip, you might solicit some further business.

On January 5, 1943, Edell wrote to Atlantic, in part, as follows:

You are positively going to get an order from the Philadelphia Quarter Master for the:

On September 18, 1943, Edell wrote to Atlantic, in part, as follows:

I spent two days in Philadelphia trying to get the Philadelphia Quarter Master to take your overage of 20 ounce cloth.

On November 16, 1944, Edell wrote to the Navy Department, on behalf of Atlantic, in part, as follows:

Would you kindly advise us if you have any requirements which could utilize 45 pieces of 20 ounce O.D. Knitted Cloth, approximately 54 to 55 inches in width. This cloth was manufactured for us, beyond our contractual yardage requirements for the Philadelphia Quartermaster Depot, and is as per specification.

611 On August 7, 1943, Edell wrote to Wright Field Material Division, on behalf of L.M.R.V., in part, as follows:

We are interested in bidding on the following items, and would appreciate receiving invitations from you for them:

On January 17, 1951, L.M.R.V. addressed a letter "To Whom it may concern," in part, as follows:

This is to advise that Mr. Harry Edell was employed by us to help in obtaining orders from government agencies.

On January 31, 1943, Edell wrote to Brewer, in part, as follows:

In the meantime the Overseas Department are interested in securing our quotation on lemon drops and fruit balls of various flavors, all of course to be made of hard texture.

On January 31, 1943, Edell wrote to Brewer, in part, as follows:

If advisable, I would like someone who is familiar with the manufacturing of this candy to meet me in New York so that we can arrange an appointment and discuss with the contractual offices.

On September 2, 1943, Edell wrote to the St. Louis Medical Depot, on behalf of Brewer, in part, as follows:

Will you kindly place us on your list of invitations for all forms of tablets and ampules, particularly --

[List of items omitted.]

We are also manufacturers of all types of Surgical Wearing Appliances and Elastic Bands, Stockings, etc., which we would like to bid on also.

On April 2, 1946, Edell wrote to Brewer, in part, as follows:

It must be very obvious to you that the securing of these contracts, plus all my servicing, entailed considerable time and expense, and since the government permits us a profit on the different manufacturing stages of these terminated awards, I am entitled to my proportionate share of the same. [Emphasis added.]

On June 11, 1943, Edell wrote to Wiley-Bickford, in part, as follows:

Inasmuch as the U.S. Government wish 37,000,000 of this item, it may be possible that if you put in a successful bid for a large quantity, you could use the facilities of both these factories.

On June 11, 1943, Edell wrote to the Philadelphia Navy Yard, on behalf of Wiley-Bickford, in part, as follows:

We are thoroughly familiar with the manufacturing of such items as the following and would be grateful if you would place us on your list of invitations to bid for same:

On June 12, 1943, Edell wrote to Wiley-Bickford, in part, as follows:

Please be advised that the Boston Quartermaster are interested in securing a large quantity of insoles, felt for Ski Boots. I am enclosing the specification for same and would appreciate your telephoning the Boston Quartermaster office, asking them for an invitation.

612 On July 5, 1943, Edell wrote to Wiley-Bickford, in part, as follows:

I have just completed arrangements subject to the last man's signature for us to manufacture 30,000 preserver Knapsacks at \$4.75 net F.O.B. factory.

On July 14, 1943, Edell wrote to Wiley Bickford, in part, as follows:

As we have been successful in obtaining the additional contract, due to your efforts, we naturally are very much concerned in the completion of this contract on time.

On April 27, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

I have not gone beyond the above points in our negotiations as I am at a loss to arrive at a final price decision, without your assistance, but I would like to emphasize that you come here as quick as possible while this matter is still of interest to them.

On May 3, 1944, Edell wrote to the Philadelphia Navy Yard, on behalf of Wiley-Bickford, in part, as follows:

This will confirm my conversation and offer of yesterday's date with you at the Philadelphia Navy Yard.

We will manufacture for you sixty thousand (60,000) Jacket type Preservers, under the terms and conditions as follows:

On June 1, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

I have completed negotiations with the U.S. Navy to manufacture:

Minimum of - - - - - 50,000 Preserver-Life Jacket Type at \$4.85 net f.o.b. factory.

On June 1, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

I have completed negotiations with the U.S. Navy to manufacture:

On a letter from Wiley-Bickford, to Edell, dated June 13, 1944, Edell made a handwritten notation, as follows:

Arranged supplemental order to take care of balance in visit to P.Q.M. Dept. HEdell

On August 3, 1944, Edell wrote to the Philadelphia Quartermaster Depot, on behalf of Wiley-Bickford, in part, as follows:

The attached bid is submitted to you with the understanding that we will have the privilege of discussing any award contemplated for us before its closing.

On August 8, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

This will confirm my telephone conversation with you of yesterday's date. Please be advised that I renegotiated our life preserver contract with the U.S. Navy officials and we are to receive 50,000 units at \$4.70 each f.o.b. factory, plus whatever extra charges will be added to this price for the changes in the new blueprints.

On August 18, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

This will confirm the fact that I negotiated a contract for us for the JACKET LIFE PRESERVER as per the new blue-prints, as follows:

613 On January 23, 1945, Edell wrote to the Philadelphia Quartermaster Depot, on behalf of Wiley-Bickford, in part, as follows:

Confirming conference held today with Mr. Harry Edell we hereby offer to make 32,000 Bags, Clothing, Waterproof, conforming to specification PQD 229D dated 5 May 1944 with exceptions as noted in NEG 36-030-45-NEG-230 at a price of \$1.56 1/2 as had.

On March 15, 1945, Edell wrote to Wiley-Bickford, in part, as follows:

Confirming my telephone conversation with you today, please be advised that we will receive an official award by mail next week, the contents of which will be as follows:

On April 14, 1944, Edell wrote to the Philadelphia Navy Yard, in part, as follows:

Therefore, we respectfully submit the following proposal to you in order that this continuity of production may be maintained:

Beginning July 1st, 1944, we will deliver 10,000 Jacket Type Life Preservers as per present specifications - monthly - until the end of the year. Total 60,00 [sic] Units at \$5.05 each - f.o.b. factory.

On January 29, 1943, Edell wrote to Colonial, in part, as follows:

I spoke to General B.O. Lewis of the Boston Ordnance, by long distance this morning, and he was very much interested in seeing that we receive the work which we want on the Trench Knife M-3.

On January 29, 1943, Edell wrote to Colonial Knife, in part, as follows:

Do not waste any time because I am sure we can get the business either from the Small War Plants or the Boston Ordnance Department, both of whom have some business to issue on the item.

On April 17, 1943, Edell wrote to Colonial, in part, as follows:

I have conferred with the procurement offices here at Wright Field about the hunting knife and have left one with them inclosed in the sheath.

On June 8, 1943, Colonial wrote to Edell, in part, as follows:

If you ever have the opportunity to quote on this knife, you can offer it at the above price.

On October 19, 1943, Edell wrote to Army Ordnance, in part, as follows:

Mr. Antonio Paolantonio and myself dropped into your office last Friday for the purpose of showing you personally, a sample of the M-3 Knife which we manufacture, as per your specifications.

On December 21, 1943, Edell wrote to Colonial Knife, in part, as follows:

please be advised that I have succeeded in securing for you the following contract:

50,000 knives at \$68 each
Contract No. NX-44755

614 On January 17, 1944, Edell wrote to the Jersey City Quartermaster Depot, on behalf of Colonial Knife, in part, as follows:

Confirming my telephone conversation with you, please be advised that we would greatly appreciate receiving invitations

from you to bid on Hunting Knives and Combat Utility Knives. We are making these at present for the Navy and Marine Corps. We can also manufacture the M-3 Army Ordnance Knife and certain kinds of Scout Knives.

On January 17, 1944, Edell wrote to Colonial Knife, in part, as follows:

Please permit me to call your attention to the fact that there is a considerable amount of government business to be secured on two, three, and four bladed scout knives. The Jersey City Quartermaster and the Post Exchange both requested them from me within the last few days.

On November 9, 1944, Edell wrote to the Navy Department, on behalf of Colonial Knife, in part, as follows:

We would quote you on the basis of large procurement, that is, an initial procurement of approximately 50,000 of these knives as follows:

On July 19, 1945, Edell wrote to the U. S. Aviation Supply Office in Philadelphia, on behalf of Colonial Knife, in part, as follows:

I would greatly appreciate hearing from you as to whether you have found it possible to increase the present award of 100,000 Giant Jack Knives, or the introduction of a new order.

On August 7, 1945, Edell wrote to the U. S. Marine Corps, Washington, D.C., on behalf of Colonial Knife, in part, as follows:

As per conference with our Mr. Edell we are sending to you under separate cover via parcel post 12 of our Giant Jack Knives.

On June 13, 1944, Edell wrote to a Government contractor, in an effort to obtain a subcontract for one of the partnership's clients, in part, as follows:

The original contracts for the Hoods and Bags were secured by me and manufactured during 1943 by Supply Manufacturing Company and the groundwork for the Sleeping Bag invitation was arranged by me during 1943.

In soliciting and procuring Government contracts for a company, Edell proceeded, in general, as follows: He went through the company's plant: he obtained a list of its machinery and equipment; he took the list to various Government procurement departments or depots; he obtained the opinion of technical personnel in a department as to what products to be purchased by the department could be manufactured with the client's equipment, and what additional equipment the client would have to acquire in order to manufacture such products; he conveyed this information to the client; he obtained specifications and samples of products which Government procurement offices wanted to purchase and brought these back to the client.

615 Edell obtained information for the companies, from Government procurement offices, as to contracts on which invitations to bid were going to be issued, and he requested that the companies be invited to bid on such contracts. If the Government agency required that a company's plant be inspected and approved before it was invited to bid, Edell arranged for such inspection and approval. He obtained information from the Government, and from other manufacturers, as to prices at which contracts had been previously awarded, and also cost and technical data, for the use of the companies in preparing their bids. He often also assisted and advised in the preparation of bids. He contacted Government procurement offices to stimulate interest in his principals' products, and he secured promises of the award of contracts.

A considerable portion of Edell's time was spent in servicing contracts given to his principals by various Government agencies. Edell arranged for executives and employees of his principals to study the operations of other companies producing the same items; he obtained priorities for materials and labor; he located sources of materials

and machinery required by his principals; and he expedited payments by the Government to his principals.

Neither Harry nor Lewis Edell was a bona fide executive officer, partner, or full-time employee of any of the eight corporations.

The partnership contributed to the efficiency of the eight companies by obtaining contracts and materials which kept their equipment and labor operating at full capacity.

Petitioner assumed no substantial risks. Even though it was never certain that any particular contract which Edell sought to obtain for one of his principals would be awarded, when contracts were awarded, the principals were bound to complete the contracts, and petitioner then received return for its costs and efforts in obtaining the contracts. Petitioner made no significant inventive or developmental contribution to the war effort.

Petitioner made a significant contribution to the war effort in obtaining technical assistance and information for its clients.

Petitioner's business was one of performing services; it was not a manufacturing business.

The parties have entered into stipulations from which there is agreement upon the following facts:

The partnership received commissions from nonrenegotiable business aggregating \$56,478.53 which is attributable to the years 1943-1945.

For each of the years 1943, 1944, and 1945, the partnership's expenses amounted to \$14,000 per year, including the salary paid to Edell's wife, or \$42,000 for the 3 years.

616 The partnership received net income, after expenses, of \$35,000, after 1945 which was for commissions attributable to services performed by the partnership during the years 1943-1945, inclusive, for the eight corporations involved.

Exclusive of commissions received by the partnership which are not subject to renegotiation, the net income, after expenses, of

the partnership for, or attributable to, the 3 years 1943-1945, amounted to the total net sum of \$300,000. That is to say, the partnership received during the 3-year period from various ones of the eight corporations involved, commissions in the net amount of \$300,000.

The partnership received from various ones of the eight corporations involved in each of the years 1943-1945, the net amount set forth below, and these net amounts are involved in this case:

Year	Net receipts of partnership
1943-----	\$56,000
1944-----	104,000
1945-----	<u>140,000</u>
Total-----	300,000

The respondent now claims that of the total net profit of the partnership for each of the years 1943-1945, \$20,000 for each year constituted reasonable compensation for the services rendered to its clients, and the following net profits were excessive: \$36,000 for 1943; \$84,000 for 1944; and \$120,000 for 1945.

The stipulated facts are found as stipulated; the stipulations of facts are incorporated herein by this reference.

Reasonable compensation for the partnership's services is \$30,000 for 1943; \$50,000 for 1944; and \$70,000 for 1945. Petitioner's profits for 1943, 1944, and 1945 were excessive to the extent of \$26,000, \$54,000, and \$70,000, respectively.

OPINION

HARRON, Judge: The first issue presents the problem whether any of the Edell partnership's earnings for each of the 3 years, 1943-1945, inclusive, is subject to renegotiation under the provisions of section 403 (a) (5) (B) of the Renegotiation Act of 1942, as

617 amended.^{2/} If that issue is decided in the affirmative, another question must be decided, the amount in each year of the partnership's excessive profits, if any, under the provisions of section 403 (a) (4) (A). It is now well established that in a Tax Court proceeding for the redetermination of excessive profits the petitioner has the burden of proving that the respondent's determination is erroneous "with respect to any amount up to that originally determined as excessive, and that the respondent has the burden in respect to any additional amounts proposed for the first time in his answer." Nathan Cohen v. Secretary of War, 7 T.C. 1002, 1011; Bass v. Stimson, 20 T. C. 428, 434. The questions to be decided under the first issue, relating to the contracts or arrangements made by the petitioner with various corporations, involve the provisions of section 403 (a) (5) (B). The petitioner has the burden of proving that the respondent erred in its determination that section 403 (a) (5) (B) applies to all such contracts or arrangements. Under the second issue, the respondent has

^{2/} SEC. 403 (a). For the purpose of this section --

(5) The term "subcontract" means --

(A) Any purchase order or agreement to perform all or any part of the work, or to make or furnish any article, required for the performance of any other contract or subcontract, but such term does not include any purchase order or agreement to furnish office supplies; or

(B) Any contract or arrangement other than a contract or arrangement between two contracting parties, one of which parties is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party, (i) any amount payable under which is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or (ii) under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts: Provided, That nothing in this sentence shall be construed (1) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (2) to restrict in any way the authority of the Secretary or the Board to determine the nature or amount of selling expenses under subcontracts as defined in this subparagraph, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

the burden of proof in respect to an additional amount for 1943 which it claimed for the first time at the trial constituted excessive profits, namely, \$10,265.^{3/} Otherwise, the petitioner has the burden of proving that the respondent's original determination of the amount of excessive profits for 1943, \$25,735, is incorrect, and that the respondent's determinations of amounts of excessive profits for 1944 and 1945 are erroneous. It is noted, further, that if the second issue is reached, the question must relate to each of the years 1943-1945, inclusive, separately, rather than to the 3-year period taken as a whole.

Under subsection (c) (1) of section 403 of the Renegotiation Act of 1942, as amended.^{4/} it is provided, in part, unless there is request by a contractor or subcontractor to the proper renegotiation authority
 618 (the War Contracts Price Adjustment Board, in this case) the power to renegotiate shall be exercised "with respect to the aggregate of the amounts received or accrued during the fiscal year * * * by a contractor or subcontractor under contracts with the Departments and subcontracts." Section 403(a) (8) defines fiscal year to mean the taxable year of the

^{3/} The respondent's original determination was that petitioner realized profits for 1943, 1944, and 1945, in the amounts of \$25,735, \$85,541, and \$170,377, respectively. Respondent, at the trial, made the claim that excessive profits were realized for 1943 in the amount of \$36,000. Under a stipulation, respondent has receded somewhat from its original determination in respect to 1944 and 1945 in that it now claims that in these years profits were excessive in the amounts of \$84,000 and \$120,000.

^{4/} (c) (1) * * * The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor.
 * * *

contractor or subcontractor under chapter 1 of the Internal Revenue Code. Petitioner's fiscal year, for purposes of the Renegotiation Act of 1942, as amended, is a calendar year. Petitioner did not request the Board to exercise its powers separately with respect to amounts received under any one or more separate contracts so as, for example, to determine whether excessive profits were realized during the 3-year period, 1943-1945, inclusive. The Board exercised its powers with respect to the aggregate amounts received by petitioner in each of the years 1943-1945, inclusive, and issued three separate orders, one for each year. This Court must, therefore, in this case, consider the question of whether petitioner realized any excessive profits on the basis of the aggregate amounts received by petitioner in each of the years 1943, 1944, and 1945. Sec. 403 (e) (1). ^{5/}

Issue I. This issue presents a question of fact as to whether Harry Edell solicited or procured Government contracts or subcontracts for each of eight corporations from which the Edell partnership received commissions during the years 1943-1945, inclusive. Respondent determined that the partnership's profits during each of those years are subject to renegotiation, and its argument in support of its determination is that the arrangements with each of the eight corporations, from which the partnership's profits were derived, constituted "subcontracts" as defined in section 403(a) (5) (B). Petitioner contends that none of the eight arrangements constituted "subcontracts" as so defined, and its principal argument in support of this contention is that it did not solicit or procure Government contracts or subcontracts for any of the eight corporations.

^{5/} (e) (1) Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may, within ninety days * * * after the mailing of the notice of such order under subsection (c) (1), file a petition with The Tax Court of the United States for a redetermination thereof.* * *

In George M. Wolff et al. v. Macauley, 8 T.C. 146, and in Leon Fine, 9 T.C. 600, we held that the petitioners were not subcontractors merely because their compensation was based or computed upon the amount of Government contracts or subcontracts received by their principals, since the petitioners did not solicit or procure any of such Government contracts or subcontracts. In the Wolff case, we said (p. 152):

the language of the statute aptly applies to manufacturers' agents and sales engineers who procure Government contracts for their principals and whose compensation is contingent upon the business they are able to obtain for the principals or fixed by the amount of such business.

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We quoted this language in the Fine case, at page 608. In the instant case, petitioner was paid fixed percentages, varying from 2 1/2 per cent to 5 per cent of the amounts paid by the Government to each of its principals under Government contracts. The Wolff and Fine cases make it clear that this is not, in itself, enough to make the arrangements subcontracts under section 403 (a) (5) (B). It is necessary, also, that the petitioner should have solicited or procured the Government contracts received by its principals.

Petitioner argues that the services performed by the partnership are sufficiently similar to the services performed by the petitioners in the Wolff case and the petitioner in the Fine case, to require the same conclusion as we reached in those cases, namely, that the petitioner did not solicit or procure Government contracts, and that, therefore, it was not a subcontractor whose profits are subject to renegotiation.

In French v. War Contracts Price Adjustment Board, 13 T. C. 276, we concluded that the services performed by French constituted soliciting or procuring Government contracts, and we therefore held that he was a subcontractor whose profits are subject to renegotiation. Respondent argues that the services performed by the petitioner are sufficiently similar to those performed by French (in the French case) to require the same conclusion.

The facts have been set forth at length in our Findings of Fact. Nevertheless, we believe a brief summary of the facts will be useful.

Petitioner had eight clients during the 3 years 1943-1945. It had one contract, or arrangement, with each of its clients. The parties have stipulated that the services performed by the petitioner for each of its eight clients and that the terms of the arrangement it had with each one were substantially the same. The evidence is general and fragmentary; it does not show in detail as to each of the eight corporations the precise services which were performed by petitioner. However, under the stipulation of the parties, if it is established that petitioner solicited or procured a Government contract for one of the eight corporations, it follows that we may find and conclude that it solicited or procured a Government contract for each of the eight corporations.

The burden of proof is upon petitioner and if it has failed to show what it did for each of its eight clients, there is failure of proof.

The record includes letter memoranda of four of the eight agreements which the petitioner had with its clients. If the question were to be decided solely upon the basis of these letter memoranda of agreement, there would be considerable strength in petitioner's contentions. The agreements which were entered into by Edell on behalf of the petitioner provided that Edell's duties would include carrying on various kinds of research, making analyses, obtaining information, and serving in an

620 advisory capacity. The draftsman did not, in every instance, include a reference to Edell's obtaining Government contracts. But the question in this case turns upon whether, in fact, each contract, or arrangement, of petitioner with a principal embodied an agreement that Edell would solicit, attempt to procure, or procure a contract, or contracts, with the Government for a principal. Such agreements may have been oral. Section 403 (a) (5) (B) is not limited to written contracts or arrangements.

Decision of the issue in this case cannot be made to depend

solely upon the terms of the few examples of letter memoranda agreements between petitioner and some of the corporations which have been placed in evidence by the petitioner. If the issue were to be so limited, it would become an easy matter to avoid the intent of the Renegotiation Act by the simple device of writing agreements which contain no specific provision coming within section 403 (a) (5) (B). Congress did not intend to permit renegotiation to be so easily escaped. Section 403 (a) (5) (B) (ii) is applicable to services "performed" as well as to services "to be performed." The question here is whether, in fact, Edell agreed to solicit and procure Government contracts for each of the eight corporations.

From the entire record, it must be concluded that Edell agreed and was expected to solicit and procure Government contracts. Before contracting with Edell, each of the eight companies desired to obtain Government contracts, but executives of the companies did not know how to proceed to obtain them. This is shown both by the testimony of those executives of companies who were called as witnesses by petitioner, and by the testimony of Edell. The inference is unavoidable that the main reason for the companies' engaging Edell was that they expected him to obtain Government contracts for them. Furthermore, respondent introduced in evidence a file of copies of correspondence between Edell and the various clients of petitioner (Exhibit B) which comprises 290 letters. All of this correspondence has been carefully examined and examples thereof have been included in the Findings of Fact. These quotations from the correspondence involve each one of the eight clients which are involved. They are fairly typical of much that is covered by the correspondence. The quoted letters show clearly that Edell solicited and procured Government contracts for petitioner's clients. Another example is as follows: Edell learned from the Government authorities at Wright Field that a contract for the manufacture of the "Knutson Vest" had been awarded to the Breslee Manufacturing Co. On September 20, 1944, he wrote to Breslee soliciting a subcontract

for Colonial to produce a component part of the Knutson Vest, a giant jackknife, and subsequently a subcontract was awarded by Breslee to Colonial Knife for production of the Jiant Jack Knife.

621 As has been set forth in the Findings of Fact, the evidence shows clearly that Harry Edell, the principal member of the partnership, was authorized to and did represent each of the partnership's eight clients in dealings with various Government agencies, and that he performed the following services: Finding out and advising each of the eight companies about opportunities for Government contracts so as to insure issuance to each of the companies of invitations to bid on Government contracts; assisting each of the companies to prepare and submit bids on Government contracts; negotiating the terms of Government contracts for each of the companies; and contacting Government procurement offices so as to stimulate their interest in the products of each of the companies. These are substantially the same services which were performed by the petitioner in French v. War Contracts Price Adjustment Board, supra, where we held that the petitioner was a subcontractor. Upon the whole record, our conclusion is that petitioner solicited and procured Government contracts or subcontracts for each of the eight corporations. The partnership undoubtedly rendered other services which were of value both to the Government and to its principals in servicing Government contracts after they were awarded to the principals, but since petitioner also solicited and procured these Government contracts for its principals, and since it agreed to do so, the contracts, or arrangements, under which it performed the services of soliciting and procuring Government contracts were subcontracts within the meaning of section 403 (a) (5) (B) (ii).

Petitioner argues, in effect, that in order for it to be a subcontractor within the meaning of section 403 (a) (5) (B), as that section has been construed in George M. Wolff et al. v. Macauley, supra, and Leon Fine, supra, it is necessary that it should have procured all of the Government business out of which it was paid a percentage. Petitioner errs in this

contention. In order to constitute each of the eight arrangements as subcontracts, it is necessary only that petitioner should have procured some part of the Government business received by each of the eight corporations, of which it was paid a percentage. This is the rule set forth in French v. War Contracts Price Adjustment Board, *supra*, at 280. In other words, if the Edell partnership procured at least one Government contract for each of the eight corporations, then all of the profits derived by the partnership from commissions on Government contracts received by each of the eight corporations is subject to renegotiation, even if part of such commissions was paid on Government contracts which the partnership did not procure.

Petitioner had the burden of proof; it was obliged to establish that, with respect to each arrangement with a client, it did not solicit or procure any Government contracts. This, petitioner has failed to do. On the contrary, the evidence shows affirmatively that petitioner did solicit and procure some Government contracts or subcontracts for each of the partnership's eight clients.

The Wolff and Fine cases, relied upon by petitioner, are readily distinguishable. In neither of those cases did the petitioners solicit or procure any Government contracts or subcontracts for their principals; their compensation was based or contingent upon the amount of the Government contracts or subcontracts procured by their principals, and not by them. In the instant case, the Edell partnership's compensation was based, or was contingent, at least in part, upon the amount of Government contracts or subcontracts procured by the partnership for each of its principals.

In the Wolff case, the petitioners were architects, and their duties were to prepare drawings of installations to be built for the Kaiser Co., and to issue invitations to bid on contracts for construction of such installations. In the Fine case, the petitioner's duties were to obtain and correlate technical information from airplane manufacturers to which the Raymond De-Icer Co. sold de-icing equipment, and to coordinate production schedules. The services performed by Edell were in no

way similar; he clearly solicited and procured Government contracts or subcontracts.

Petitioner argues, also, that since it did not become entitled to any compensation until after one of the eight corporations had successfully completed a Government contract and had been paid by the Government, its compensation was not computed or contingent upon the amount of Government contracts it obtained for its principals. We are unable to follow petitioner's reasoning. Before Government contracts were successfully completed by the eight corporations and the corporations were paid by the Government, petitioner first procured the Government contracts, and it was ultimately paid a percentage of such Government contracts. Therefore, the amount of the partnership's compensation was, in the first instance, contingent upon its obtaining Government contracts for its principals, and it is immaterial that it had to wait for actual payment of its compensation until after the Government contract had been successfully completed and the principal paid by the Government, or even that its compensation might also be secondarily contingent upon such successful completion and payment.

Under arrangements between petitioner and each of eight corporations, the compensation received by petitioner was contingent or computed, at least in part, upon the amount of Government contracts which petitioner procured for each of the eight corporations, during the years 1943-1945, inclusive. It follows that petitioner was a sub-

623 contractor within the meaning of section 403 (a) (5) (B) (i), and that in each year it received income which is subject to renegotiation.

Issue 2. The next question is what amount, if any, of the profits derived by petitioner under the arrangements was excessive. The parties have stipulated that these net profits, before any allowance by the respondent of a reasonable amount for each year, amounted to \$56,000, \$104,000 and \$140,000 for 1943, 1944, and 1945, respectively. Respondent contends that for each year \$20,000 represents a reasonable profit. Petitioner claims that no part of its net profits for any year was excessive.

In their stipulation as to the amount of net profits derived from renegotiable business in each of the years 1943-1945, inclusive, the parties have allocated a net amount received in 1946 to the years involved, under section 403 (h).^{6/} Cf. Rosner v. W.C.P.A.B., 17 T. C. 445, 458, 461.

There is no question to be decided relating to the allowance of a reasonable amount for the expenses of the partnership in each year. Respondent has allowed \$14,000 for each year, and this allowance has been accepted by petitioner. Cf. Greaves v. War Contracts Price Adjustment Board, 10 T.C. 886, 891-893.

Petitioner contends that the amount of \$300,000, the total amount of net profits for the 3 years involved, does not constitute excessive profits. In effect, petitioner asks the Court to consider the question under this issue as one which involves a determination of the total amount of excessive profits for 3 years considered together, rather than a determination of the amount of excessive profits for each of 3 years. At the outset, therefore, it is necessary to point out that the question must be considered with respect to each year, rather than with respect to one period of 3 years, under section 403 (c) (1).

^{6/} SEC. 403 (h). This section shall apply only with respect to profits derived from contracts with the Departments and subcontracts which are determined under regulations prescribed by the Board to be reasonable allocable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor in keeping his books, profits determined to be so allocable shall be considered as having been received or accrued not later than the termination date. For the purposes of this subsection, the term "termination date" means whichever of the following date first occurs --

- (1) December 31, 1945; or
- (2) the date proclaimed by the President as the date of termination of hostilities in the present war; or
- (3) the date specified in a concurrent resolution of the two Houses of Congress as the date of the termination of hostilities in the present war.

In support of its contention that no part of its profits for any of the years involved was excessive, petitioner argues that the risks incurred and the capital used in its business were large because it had to defray its own expenses and it was not paid until after one of its clients had made delivery to the Government and had been paid by the Government; that the character of the services rendered by the partners, as well as the time and effort expended by them, requires a high rate of compensation; and that the partnership should be credited with time and effort expended by Harry Edell in 1942 and in 1946, in work affecting the earnings of the partnership in 1943, 1944, and 1945, the years here involved.

624 Respondent, in support of its contention that all of the profits which exceed \$20,000 per year are excessive, argues that petitioner acted simply as a conveyor of information from Government agencies to each of its eight clients.

Section 403 (a) (4) (A)^{7/} lists the factors to be taken into consid-

^{7/} Sec. 403. (a) For the purposes of this section --

* * * * *

(4) (A) The term "excessive profits" means the portion of the profits derived from contracts with the Departments and subcontracts which is determined in accordance with this section to be excessive. In determining excessive profits there shall be taken into consideration the following factors:

(i) efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of materials, facilities, and manpower;

(ii) reasonableness of costs and profits, with particular regard to volume of production, normal prewar earnings, and comparison of war and peacetime products;

(iii) amount and source of public and private capital employed and net worth;

(iv) extent of risk assumed, including the risk incident to reasonable pricing policies;

(v) nature and extent of contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(vi) character of business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover;

(vii) such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

eration in determining excessive profits. Since petitioner was not a manufacturer, some of the factors listed in section 403 (a) (4) (A) obviously are not relevant. Consideration has been given to the factors which are applicable to petitioner's business.

We do not think that petitioner incurred any substantial risks in its business. Although petitioner had to wait for its compensation until after the Government had paid its client, in the case of each Government contract it solicited or procured, the record establishes that the partnership enjoyed a high degree of certainty that it would ultimately receive commissions sufficient to cover all of its expenses and provide adequate compensation for the time of the partners, as well as a substantial profit.

The only capital which was used in petitioner's business is the amount of \$5,000 loaned to the partnership by Lewis Edell. Petitioner has not offered any evidence to show that any other capital was used in the business. The partnership agreement provided for prompt repayment of this \$5,000 to Lewis, as well as for division of all partnership profits. Petitioner has not shown that any partnership profits were retained in the business and used as capital. However, it is clear that some small capital was necessary to the conduct of petitioner's business,

625 and our determination of the amount of excessive profits in each year includes an allowance for a reasonable return on such capital as is estimated to have been used in the business in each year.

The principal element in our determination of the amount of profits in each year which was not excessive, is the value of the personal services rendered by the partners. This includes primarily the services of Harry Edell. Lewis Edell performed only negligible services for the partnership. He was employed full time, during the years involved, as a sales agent for several sportswear manufacturers, and he devoted little time to the work of the partnership. On the other hand, Harry Edell devoted long hours each day to the work of the partnership, he worked on weekends, and he never took a vacation during the years involved.

Petitioner introduced the testimony of two management consultants, as expert witnesses, upon the value of the services performed by the Edell partnership. We have considered this testimony. We have considered, also, the fact that part of the profits of petitioner during 1943-1945, inclusive, was the result of work done by Harry Edell in 1942. Cf. Armstrong v. War Contracts Price Adjustment Board, 15 T.C. 625, 636-637, affirmed per curiam 194 F. 2d 875, certiorari denied 343 U.S. 967.

Although the services performed by Edell were not of a technical nature, and very little, if any, knowledge of engineering was required in their performance, the record establishes that the services performed had substantial value to the Government and to each of the partnership's eight clients. Executives of each of the eight companies lacked the ability to convert to war production and to fulfill Government requirements without the kind of assistance provided by Edell. By ascertaining what products each of the companies could produce for the Government with their existing plants and equipment, by obtaining technical and cost information for them, and by locating sources of supplies and machinery they required, Edell aided each of the companies to convert to war production, and to produce many goods necessary to the war effort. Thus, he made some contribution to the war effort.

Upon the whole record, we think that the amounts which the respondent determined to be excessive profits for each year, are too high. After a careful consideration of all of the evidence, it is found and concluded that the petitioner derived excessive profits from renegotiable income in the amounts of \$26,000 \$54,000, and \$70,000 for the years 1943, 1944, and 1945, respectively.

An order will be issued in accordance herewith.

PLAINTIFF'S EXHIBIT NO. 1

WENSTEIN, PITCHER, AMANN & PARR
25 BROAD STREET
NEW YORK 4

December 7, 1953

Warren E. Burger, Esq.
Assistant Attorney General
Civil Division
Department of Justice
Washington 25, D. C.

Attention James H. Prentice, Esq.

Re: Harry Edell and Lewis H. Edell,
a copartnership, d/b/a Harry Edell
v. War Contracts Price Adjustment
Board, Tax Court No. 882-R.

Dear Sir:

Receipt is acknowledge of a copy of your letter of December 2, 1953 relative to the above case addressed to Messrs. Pittman & Roberts.

It is not clear to me in view of the statement in your letter -

"In arriving at a proposed counteroffer totaling \$183,000 the amount of expenses to be allowed to Mr. Edell as well as the profits which the partnership would retain after renegotiation are substantially in agreement with the total figures set forth in your letter of November 12, 1952,"

how the resultant figure of \$183,000 was arrived at.

I have in my files a computation which I had been led to believe was in accordance with the records of your department, which shows Mr. Edell's commissions year by year and allocates those commissions between contracts admittedly not subject to renegotiation and contracts which might be claimed to be subject to renegotiation. I enclose a copy of that computation.

I would like to make an appointment to speak with Mr. Prentice regarding those computations which form the basis for the \$183,000 mentioned in his letter either the latter part of this week or the early

part of next week and I would appreciate it if Mr. Prentice would call me collect to arrange such a conference.

My purpose in sending the tabulation enclosed with this letter is to furnish Mr. Prentice before our meeting with a copy of what I believe to be the correct figures based upon the assumption that the doctrine of the Fine case would not apply.

Very truly yours,

Douglas M. Amann

* * *

PLAINTIFF'S EXHIBIT NO. 2

* * *

December 2, 1953

Pittman & Roberts,
Attorneys at Law,
Bowen Building,
Washington 5, D. C.

Re: Harry Edell and Lewis H. Edell, a
copartnership, d/b/a Harry Edell v.
War Contracts Price Adjustment
Board, Tax Court No. 882-R.

Gentlemen: .

You will recall that in your letter dated November 12, 1952, you proposed an offer in compromise on behalf of Mr. Edell of the above Tax Court renegotiation case.

On November 23, 1953, the Attorney General authorized the rejection of Mr. Edell's offer totaling \$42,109 for the fiscal years involved and authorized the proposal of a counteroffer totaling \$183,000 for the three fiscal periods. Accordingly, you are hereby notified that Mr. Edell's offer has been and is hereby rejected.

We herewith propose a counteroffer under the terms of which the parties would agree to stipulate to the Tax Court that the partnership's excessive profits for the calendar years 1943, 1944 and 1945 were in the amounts of \$12,000, \$57,000 and \$114,000, respectively.

As you pointed out in your letter of November 12, 1952, the offer in compromise was based primarily on your position that under the rule of the Leon Fine (9 T.C. 600) and George M. Wolff (8 T.C. 146) renegotiation cases a large majority of the commissions received or accrued by the partnership were not subject to renegotiation. It is our view that even if Mr. Edell's contracts with his principals did not require him to solicit, attempt to procure, or actually to procure, contracts, such contracts are nevertheless subject to renegotiation if, in performing the "services" for his principals Mr. Edell did in fact solicit, attempt to procure or actually procure contracts for his principals. We believe that this position is supported factually by existing documentary evidence and is correct as a matter of law under the literal language of the Renegotiation Act and the legislative history involving Section 403 (a) (5) (B) of the Renegotiation Act.

In arriving at a proposed counteroffer totaling \$183,000 the amount of expenses to be allowed to Mr. Edell as well as the profits which the partnership would retain after renegotiation are substantially in agreement with the total figures set forth in your letter of November 12, 1952.

Our Mr. James H. Prentice, to whom the case is assigned, will be pleased to confer with you in Washington at a mutually convenient time in order to discuss more fully the factual and legal problems presented in the case as well as the accounting and reasoning involved in reaching the figures of the proposed counteroffer.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By: Edward H. Hickey, Chief,
General Litigation Section

PLAINTIFF'S EXHIBIT NO. 3

February 1, 1954

Mr. Harry Edell
Mayflower Hotel
Washington, D.C.

Dear Mr. Edell:

I have your letter of January 31st.

I am enclosing seven typewritten sheets which show the net cost of the renegotiation settlement proposed by Prentice. I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week.

In this connection you should be mindful that we were retained to adjust your 1943 through 1945 taxes. Because, however, partnership income was reported by you and your brother in the years 1946 and 1947, the tax adjustments for the years 1943 through 1945 will be only a part of the total tax liability. As for 1946, I have a copy of your tax return and I will be able to estimate the adjustment which will be made by the tax people on the basis of the disallowance of the partnership. I note, however, that in the partnership return for that year a deduction of \$30,000 on account of expenses was taken. I am certain that the Internal Revenue Department will not allow anything like that amount for that year. The date that I have here would not indicate to me that the tax people will allow more than a token amount for expenses for that year. You might see whether you have any additional data which you can use to bolster this claimed deduction.

I do not have a copy of your 1947 tax return and hence am unable to offer any opinion as to a possible settlement with reference to it.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By

RENEGOTIATIONHarry Edell

\$ 2,878.95

17,007.77

20,099.19

\$ 39,985.91

Lewis Edell

\$ 1,971.09

12,945.80

16,201.23

\$31,118.12

Total tax credit

\$71,104.03

Excess profits \$183,000.00

Less tax credit 71,104.03\$111,895.97

Interest at 4% from 6/29/49 to 3/21/52 \$12,164.39

Interest at 6% from 3/21/52 to payment
date assumed 3/21/54 13,427.44

Costs

38.80

Total renegotiation cost

\$137,526.60TAX CREDIT COMPUTATION1943

Partnership net income per return

\$24,454.58

Allocated - Harry Edell \$17,227.29

Lewis Edell 7,227.29

\$24,454.58

Adjustment on account excessive profits

12,000.00

\$12,454.58

Salary Harry Edell

10,000.00

\$ 2,454.54

Share Lewis Edell

1,227.29

As Adjusted - Harry Edell \$11,227.29

Lewis Edell 1,227.29\$12,454.58

Decrease - Harry Edell \$6,000.

Lewis Edell 6,000.

Harry Edell

Income per return	\$19,654.79
Less Excess Profits	<u>6,000.00</u>
Revised Income	\$13,654.79
Exemptions and Credits	<u>1,900.00</u>
Surtax net income	\$11,754.79
Earned income credit	<u>1,365.47</u>
Balance subject to normal tax	<u>\$10,389.32</u>

Normal tax at 6% -	\$623.35
Surtax -	<u>2,581.53</u>
	\$3,204.88

\$ 3,204.88

Total income tax

Victory tax net income per return	\$19,682.29
Less Excess Profits	<u>6,000.00</u>
	\$13,682.29

Revised Victory tax net income	\$13,682.29
Less Spec. Ex.	<u>624.00</u>
Income subject to Victory tax	\$13,058.29
Victory tax before credit	652.91
Victory tax credit 44%	<u>287.28</u>
Net Victory Tax	<u>365.63</u>
Total Taxes 1943	\$ 3,570.51
Income Tax 1942	1,215.59

Forgiveness	\$1,215.59
	<u>911.70</u>

Unforgiven portion

303.89

\$ 3,874.40

Total income and Victory tax	
Tax assessed	\$6,753.35
Total liability	<u>3,874.40</u>
Tax credit -Harry	<u>\$2,878.95</u>

TAX CREDIT COMPUTATION1943 - Lewis Edell

Income per return	\$11,666.92
Less excess profits	<u>6,000.00</u>
Revised net income	\$ 5,666.92
Exemptions and credits	<u>1,200.00</u>
Surtax net income	\$ 4,466.92
Earned income credit	<u>566.69</u>
Balance subject to normal tax	<u>\$ 3,900.23</u>

Normal tax	\$234.01
Surtax	<u>701.39</u>

Total income tax	\$ 935.40
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Victory tax net income per return	\$12,051.92
Less excess profits	<u>6,000.00</u>
Revised Victory tax net income	\$ 6,051.92
Less specific exemption	<u>624.00</u>
Income subject to Victory tax	\$ 5,427.92

Victory tax before credit	\$271.39
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Victory tax credit (40%)	<u>108.55</u>
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Net Victory tax	<u>162.84</u>
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Total income tax and Victory tax	\$ 1,098.24
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Income Tax 1942 -0-	<u>-0-</u>
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Total income tax	\$ 1,098.24
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Tax assessed	\$3,069.33
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Total liability	<u>1,098.24</u>
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Tax credit-Lewis	<u>\$1,971.09</u>
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TAX CREDIT COMPUTATION1944

Partnership net income per return		\$63,939.77
Allocated Harry Edell	\$36,969.89	
Lewis Edell	<u>26,969.88</u>	
	\$63,939.77	
Adjustment		<u>57,000.00</u>
Partnership net income as adjusted		\$ 6,939.77
All allocable to Harry Edell		
Decreases		
Harry Edell	\$30,030.07	
Lewis Edell	<u>26,969.88</u>	
	<u>Harry Edell</u>	
Net income per return		\$38,242.35
Less excess profits		<u>30,030.07</u>
Adjusted net income		\$ 8,212.28
Exemptions		<u>1,500.00</u>
Surtax net income		\$ 6,712.28
Surtax		1,150.94
Adjusted net income		8,212.28
Less normal tax ex.		<u>500.00</u>
Normal tax net income		\$ 7,712.28
Normal tax		<u>231.36</u>
Total tax		<u>\$ 1,382.30</u>
Tax assessed	\$18,390.07	
Tax liability	<u>1,382.30</u>	
Tax credit -	<u>\$17,007.77</u>	

TAX CREDIT COMPUTATION1944 - Lewis Edell

Net income per return	\$30,292.18
Recapture excess profits	<u>26,969.88</u>
Adjusted net income	\$ 3,322.30
Surtax exemption	<u>1,000.00</u>
Surtax net income	\$ 2,322.30
Surtax	644.46
Adjusted net income	3,322.30
Normal tax exemption	<u>500.00</u>
	\$ 2,822.30
Normal tax	84.66
Total tax	729.12

Tax assessed	\$13,674.92
Tax liability	<u>729.12</u>
Tax credit	<u>\$12,945.80</u>

1945

Partnership income per return	\$ 71,936.25
Allocated Harry Edell	\$40,968.13
Lewis Edell	<u>30,968.12</u>
	\$71,936.25
Adjustment	<u>114,000.00</u>
Partnership income as adjusted	-0-
Decreases Harry Edell	\$40,968.13
Lewis Edell	<u>30,968.12</u>

1945 - (Contd.)

HARRY EDELL

Net income per return		\$40,290.54
Less excess profits		<u>40,968.13</u>
		-0-
Tax assessed	\$20,099.19	
Tax liability	<u>-0-</u>	
Tax credit		<u>\$20,099.19</u>

LEWIS EDELL

Net income per return		\$34,872.00
Recapture excess profits		<u>30,968.12</u>
Adjusted net income		\$ 3,903.88
Exemption		<u>500.00</u>
Normal tax net income		\$ 3,403.88
Normal tax		<u>102.11</u>
Adjusted net income		\$ 3,903.88
Surtax exemptions		<u>1,000.00</u>
Surtax net income		\$ 2,903.88
Surtax		404.62
Total tax liability		506.73
Tax assessed	\$16,707.96	
Tax liability	<u>506.73</u>	
Tax credit		<u>\$16,201.23</u>

PLAINTIFF'S EXHIBIT NO. 4

**LOWENSTEIN, PITCHER, AMANN & PARR
25 BROAD STREET
NEW YORK 4**

COPY

July 21, 1954

**Mr. Harry Edell
The Mayflower
Washington, D. C.**

Dear Mr. Edell:

I have your letter of July 15th. I have reviewed our files and carefully re-read our letter to you of May 14th. I am convinced that the proposal made with our letter of May 14th is, if unfair, unfair only to my partners. From the client's standpoint I consider my proposal a most reasonable one, the amount being far less than the reasonable value of the services rendered to you to date by this firm. I would remind you of the following:

We were retained by you in the latter part of March, 1951. Very shortly thereafter we called the attention of Messrs. Pittman & Roberts to the doctrine set forth in the Fine Case (9 T.C. 600). After several conferences with this firm and with you we informed them that we felt that they should submit to the Department a formal offer in compromise which would be backed up with an affidavit of the services which you rendered. At your specific request we agreed to perform the services required in analyzing your correspondence and in preparing an affidavit. On May 30th you delivered to us a large mass of unclassified material and it was necessary to read and classify all of this correspondence before a start could be made on the task of drafting the affidavit. Although you were absent most of the summer of 1951 and were unable to then assist us in completing the affidavit, on October 16, 1951 we submitted a draft of the affidavit to Mr. Taylor and Mr. Stoval for their comments. The affidavit was thereafter revised and placed into final form on December 6, 1951. In the light of the absence of finalcial records and the tremendous task involved

in attempting to classify the correspondence and the intervention of vacations, we believe this work was accomplished as quickly as could reasonably be expected. I consider the allocation of \$3,000 as a charge for preparing this affidavit a most reasonable one and I certainly would not, at the present time, even consider undertaking a job of such magnitude for such a modest fee.

With regard to the charge for opposing the Government's motion for judgment on the pleadings, the statements contained in your letter are based on a misconception both of the law and of the facts. In the first place, Pittman & Roberts did not argue the same motion the year previous. They made a motion to dismiss the complaint of the Government prior to filing your answer and for a stay. Their motion was denied. The motion which this firm opposed was the first motion made by the Government for judgment in the case. In the second place, it is absolutely untrue that I insisted on arguing the motion in the New York courts. I remember distinctly pointing out to you that Pittman & Roberts should handle that motion since you had a fee arrangement with them which would permit you to request them to handle this matter for you without additional expense. You emphatically stated, however, that you did not wish them to argue the motion and requested me to do so. In the third place, I called your attention to the fact that I was very dubious that the motion could be successfully opposed and urged that you give consideration at that time to the posting of security. This you refused to do. In view of the fact that you desired every possible argument to be made in opposition to the Government's motion, it was necessary to research the law on this subject most thoroughly. This research disclosed that there was a possibility of successfully contending that the procedure under which the Government was operating was unconstitutional. Because you stated that you wished to leave no stone unturned in an effort to defeat the motion, these arguments were exhaustively briefed and the brief was submitted to Judge Goddard. At the argument, which you attended,

the Judge stated that he, as a trial judge, would not go into the constitutionality of the procedure. The fact that the Judge adopted this attitude in no wise detracts from the fact that we, at your request and, in fact, at your insistence, went through the necessary legal research to brief this point thoroughly. Although Judge Goddard granted the Government's motion for judgment, he did not accede to their demand for 6% interest and we were successful in having the rate of interest reduced to 4%, although the Government brought to the attention of the court numerous authorities involving renegotiation refunds where 6% interest had been awarded.

After the motion had been decided adversely to you, you finally agreed to post security in an effort to avoid execution under the judgment. The escrow agreement which was prepared at that time was in the form suggested by and acceptable to the Department of Justice of the United States, was examined by both Mr. Taylor and myself, and in the opinion of all of us represented a proper agreement for you to execute. We believe that the charge which we have made against you for preparing this escrow agreement is extremely reasonable.

I do not understand your comment relative to an alleged failure on our part to docket the judgment in the office of the Clerk of the County of New York. The only person obtaining advantage by docketing a judgment is the judgment creditor, which in this case was the Department of Justice. The fact that the United States Government did not docket the judgment in the County Clerk's office had no bearing whatsoever on the difficulties which you encountered in attempting to sell real estate in which you had an interest. The only result of the failure to file was that the attorney who handled the real estate transaction for you might have argued that the judgment was not a lien on the property and that therefore no release from the Government was necessary. You have also stated that the escrow agreement was "loosely composed" and that the motion to release the Government's alleged lien was made necessary because of this. The fact is that

you never revealed to us at the time the escrow agreement was prepared that you had any interest in real estate. Despite this, however, the intention of the parties was spelled out in the escrow agreement clearly enough to enable us to obtain for you a result which you very much desired and which, so far as our own research or that of the Government or the court disclosed, was entirely unprecedented. You apparently were well aware of this since, even before the court rendered its decision, you wrote a letter complimenting us on the manner in which this motion was handled.

The statements contained in the last paragraph of page 2 of your letter are entirely erroneous. At the time you called us into this situation you had a petition filed in the Tax Court seeking relief. We have in nowise delayed hearing on that petition. The proceeding is still pending and when reached in its normal course will be tried unless, in the meantime, you can settle your differences with the Department of Justice.

The tone of your letter convinces me that you have no intention of treating fairly with your attorneys. I remind you that when you first came to this office I told you that I felt you should allow Pittman & Roberts to handle the matter and that you were incurring unnecessary additional expense by retaining our firm. You insisted, however, that you wanted us to represent you and in fact asked your brother to intercede with us to interest ourselves in your affairs. We, at that time, told you that our charge to you would be based on the time which we spent on the matter and if you will refer to your correspondence you will find that very clearly set forth in our letter to you of March 20, 1951. Despite the fact that we have made a very substantial reduction in the amount we are requesting you presently to pay, you have quibbled with even that minimum payment. Under the circumstances we feel that it would be useless for us to continue to represent you. Will you please, therefore, send us your check in payment of the accumulated fees of \$1,855, as reviewed in our letter to you of May 14, 1954, upon receipt of which we will be pleased to turn over to you the

papers in this case.

Our offer to continue to represent you upon the terms set forth in my letter of May 14th is hereby withdrawn.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By Douglas M. Amann

PLAINTIFF'S EXHIBIT NO. 5

New York, N. Y.
July 28, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my lawful attorney to take all steps, proceedings and actions necessary, or that you may deem proper in the settlement of my dispute with the Department of Justice concerning the Renegotiation Act of 1951, as amended.

I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the Justice Department offer of One Hundred Thirty-Eight Thousand Dollars (\$138,000.00) and the final settlement of the dispute. It is understood that your compensation is limited to the amount stipulated in this agreement.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.
Dated: New York, N. Y., July 28, 1954.

/s/ William J. Casey

PLAINTIFF'S EXHIBIT NO. 6

New York, N. Y.
July 28, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my attorney to take all steps, proceedings and actions necessary, or that you may deem proper to settle my income tax disputes currently pending with the United States Government.

I hereby tender the sum of \$2,500.00, which is to be a minimum fee for your services. I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement, together with such costs as may be awarded in any action instituted by you on my behalf concerning tax deficiencies assessed for the calendar years 1943, 1944, 1945, 1946, and 1947, and any recovery made on a refund claim to be filed with respect to a tax paid on a sum of \$121,200 received in 1952 in settlement of litigation in California. It is understood and agreed that, in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation and that you will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund.

It is further understood that the \$2,500.00 paid to you now will, in no case, be returned to me, but, in the event of a settlement, it will be used to reduce the contingency fee.

Very truly yours,
/s/ Harry Edell

I hereby accept the foregoing retainer.
Dated: New York, N. Y., July 28, 1954.

/s/ William J. Casey

PLAINTIFF'S EXHIBIT NO. 7

August 6, 1954

Mr. Harry Edell
General Delivery
Rehobeth Post Office, Delaware

Dear Harry:

We were right and you were wrong about \$183,000 being the settlement offered by the Justice Department. It shrank down to \$138,000 on the basis of Amann's estimate of the possible tax credits. The following excerpt from Judge Kaufman's opinion explains the two figures:

"On December 2, 1953, the Government rejected a settlement offer which had been made by defendant and proposed an alternative settlement for the gross sum of \$183,000, before giving effect to applicable tax credits provided by statute. Defendant asserts that he has been advised by his attorneys that the tax credits to which he is entitled would reduce his actual liability under the Government's proposed settlement to approximately \$138,000, including interest. The Government neither contradicts nor accepts this statement and notes only that it is an "obviously speculative assertion".

My percentage of the renegotiation saving should be based on the reduction before making the tax deduction. That is the way my original proposal to you was put, and I changed the figure from \$183,000 to \$138,000 when you said it was probably a typo and when Benedict mistakenly confirmed your expression of opinion. My proposition to you was as follows:

A \$2,500 retainer, deductible from the fee earned on a contingent basis.

Contingent fee of 30% of the difference between the Justice Department offer of \$183,000 and final settlement.

Plus 30% of the difference between tax deficiencies assessed

for 1943, 1944, 1945, and 1946, and the amount finally paid in settlement of these deficiencies, except that the contingency fee will not apply to reductions in the tax assessment effected as a result of amounts taken out of income by renegotiation.

Plus 30% of any recovery made on a refund claim filed with respect to tax paid on \$150,000 received in settlement of litigation in California.

Thus, you see the percentage of the renegotiation refund was in terms of before-tax money. You get 70% on which you pay taxes and that is your tax credit, and I get 30% on which I pay taxes. On the tax recoveries, I get 30% of the tax reduction, which is after-tax money to you. I pay taxes on my share and you can deduct what you pay me, so that you get a net recovery and the cost of getting recovery is reduced by a tax saving to you on the payment to me. On the renegotiation recovery, we should both share in the saving before it is reduced by a tax liability on net income.

We became confused because of the coincidence that the before-tax offer of \$183,000 shrank down to an apparent typographical error, \$138,000, after reflecting an estimated tax credit.

I am enclosing another retainer agreement reflecting this change. Will you sign and send it back to me, together with the one which it is superseding? An additional copy is enclosed for your records.

Yours,

Enclosures: Two copies of new retainer agreement

[I'm going to Dallas for 2 days, will be in Washington on Wednesday, back here Thursday. Meanwhile Benedict will hit Socolow as to whether, on the basis of your money being a trust fund, he wants to return it or go down to see Kaufman J about it.]

PLAINTIFF'S EXHIBIT NO. 10
U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE
WASHINGTON 25

* * *

October 13, 1954

Mr. William J. Casey
60 East 42nd Street
New York 17, New York

Dear Mr. Casey:

This office is in receipt of your letter of October 8, 1954, and the attached copy of the retainer fee agreement for your representation before the Treasury Department of Harry Edell.

There is enclosed for your information and future guidance a mimeographed copy of the instructions pertaining to fee agreements. When reading these you should particularly note the requirements relative to the amount involved in litigation and the amount of the retainer fee. The amount involved in litigation must be given. On this amount, rather than on the amount of reduction in savings to your client, should your maximum fee be based. Between this fee and the minimum fee there must be a substantial relationship. This latter fee may not fall below 10 percent of the maximum, as is pointed out in the enclosed instructions.

Inasmuch, therefore, as this office has not been advised of the amount involved in litigation, it is unable to determine whether the amount of your retainer fee measures up to the requirement of at least 10 percent of your maximum fee.

The file will therefore be held in open status pending the receipt of information relative to the amount involved in litigation for the years 1943 to 1947, inclusive.

Very truly yours,

/s/ George C. Lea
Director of Practice

Enclosure

PLAINTIFF'S EXHIBIT NO. 11

October 8, 1954

Mr. Harry Edell
Mayflower Hotel
Connecticut Avenue and De Sales, N.W.
Washington, D. C.

Dear Mr. Edell:

It is necessary that the enclosed affidavit be signed by you in order to comply with the Treasury Department's Regulations. We have filled out the form, so all that is necessary is your signature and the signature of two witnesses.

Enclosed is an addressed envelope for remitting the form to us.

Yours very truly,

Edward J. Brady

Enclosures: Form 790 - Revocation of Power of Attorney
(to be signed, witnessed and returned to WJC)
Envelope for returning Form 790
Carbon copy of letter dated July 28, 1954, to
Douglas M. Amann revoking Power of Attorney

PLAINTIFF'S EXHIBIT NO. 12

October 8, 1954

Director on Practice
Commissioner of Internal Revenue
United States Treasury Department
Washington, D. C.

Dear Sir:

I, the undersigned, have entered into a partial contingent fee arrangement with one Harry Edell, to represent him as an attorney and to take all steps, proceedings and actions necessary or proper to settle his income tax disputes currently pending with the United States Government.

I received the sum of \$2,500 which is to be the minimum fee for my services. It is also understood that I am to receive as

compensation thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement, together with such costs as may be awarded in any action instituted by me concerning tax deficiencies assessed for the calendar years 1943, 1944, 1945, 1946 and 1947, and thirty per cent (30%) of any recovery made on a refund claim to be filed with respect to a tax paid on a sum of \$121,200 received in 1952 in settlement of litigation in California. It is understood between my client and myself that if the deficiency proposed by the United States Treasury Department will be reduced by any amount as a remit of renegotiation, I will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund.

Enclosed is a copy of the retainer fee agreement between Harry Edell and myself.

Yours very truly,

Enclosure

[Filed September 17, 1956]

PLAINTIFF'S EXHIBIT NO. 14

* * * * *

APPENDIX A TO REPLY BRIEF

Mr. Edell's Statement

1. THE WITNESS: That was in the year -- approximately 1937, 1938, something like that, 1939. I say somewhere between 1937, 1938 and 1939.

BY MR. CASEY:

Q. You were making \$25,000 a year? A. That is right (T.38) cf.

T 406 & 407.

Facts established by cross-Examination or Documentary Evidence

1. Harry Edell was a bankrupt January 31, 1938 to discharge on June 17, 1940 (Ex. E). Harry Edell's income for 1938 was \$5,150 (Exhibit F).

Mr. Edell's Statement

2. Q. Now you also testified, as I understand it, shortly after this period you were sick or something.

A. That is correct.

Q. About what year was that?

A. That was beginning on or about 1939 or the middle of it, sometime around there.

Q. From the middle of 1939 to approximately when? A. To about the beginning of 1942.

Q. All right. Now you indicated that during this period you lived on returns from some insurance policies.

A. I didn't say that. I said I received returns from insurance policies. I had other funds of my own which I was using up. (T. 409).

Facts Established by Cross-Examination or Documentary Evidence

2. Harry Edell was a bankrupt January 31, 1938 to discharge on June 17, 1940 (Ex. E).

Harry Edell's income for 1938 was \$5,150 (Exhibit F).

PLAINTIFF'S EXHIBIT NO. 17A

**COMPUTATION OF ATTORNEYS FEES FOR REDUCTION
OF U.S. GOVERNMENTS EXCESSIVE PROFITS
CLAIM**

A. FINAL SETTLEMENT OFFER BY U.S. DEPARTMENT OF JUSTICE	\$ 183,000.00
B. JUDGMENT OF U. S. TAX COURT AFTER TRIAL	<u>150,000.00</u>
C. REDUCTION OBTAINED BY OFFICE OF ATTORNEY CASEY	33,000.00
D. PERCENT OF REDUCTION DUE ATTORNEY UNDER FEE AGREEMENT OF AUGUST 6, 1954	<u>30%</u>
E. DOLLAR AMOUNT OWED ATTORNEY BY DE- FENDANT UNDER FEE AGREEMENT OF AUGUST 6, 1954	9,900.00

PLAINTIFF'S EXHIBIT NO. 18A
ATTORNEY'S FEES FOR REDUCTION
OF INCOME TAXES

	<u>Amount claimed</u> <u>By Government</u>		<u>Amount</u> <u>Determined</u>		<u>Savings</u> <u>Effected</u>
1943	\$ 16,406.52	-	\$ 14,040.37	=	\$ 2,366.15
1944	32,907.71	-	21,265.84	=	11,641.87
1945	75,297.19	-	62,592.54	=	12,704.65
Totals	\$124,611.42	-	\$ 97,898.75	=	\$ 26,712.67
SAVINGS OBTAINED BY OFFICE OF ATTORNEY					
CASEY	-	-	-	-	\$ 26,712.67
PERCENT OF SAVINGS DUE ATTORNEY UNDER FEE					
AGREEMENT OF JULY 28, 1954	-	-	-	-	X 30%
DOLLAR AMOUNT OWED ATTORNEY BY					
DEFENDANT	-	-	-	-	\$ 8,013.80

PLAINTIFF'S EXHIBIT NO. 19

March 20, 1958

Mr. Harry Edell
c/o University Club
1135 16th Street, N.W.
Washington 6, D. C.

Dear Harry:

We have reviewed your tax case on renegotiations with the Field Agent and the Conferee of the Appellate Staff and all of the files and records in our possession with Laurens Williams and his associate, Kenneth Liles. They have told us that they agree that we have made a good settlement and that they don't know how a better settlement can be made. As you know, the Revenue Service had been pressing us severely for a decision and we are hoping that you and Mr. Williams will arrive at a decision sometime next month. We had extreme difficulty getting this latest extension and Mr. Williams will tell you that it is definitely the last one which can be obtained.

All of these delays are no reason for you to delay in paying me the money I earned under our agreement for cleaning up the renegotiation case. I have been carrying this for three and a half years. I was agreeable to your paying this bill in 1958 because you felt it desirable in view of your own tax situation. 1958 is now here and I would greatly appreciate it if you would pay my bill, copy of which is enclosed, promptly.

Yours,

Enclosure

MR. HARRY EDELL
c/o University Club
1135 - 16th Street, N.W.
Washington 6, D. C.

March 21, 1958

As per our agreement -- 30% of difference between
\$183,000 (best offer) and \$150,000 (determined
by Court)

\$ 9,900.00

Disbursements (schedule attached)

1,003.50

\$ 10,903.50

This firm retains \$2,500.00 which was received and reported as a retainer for the settlement of tax deficiencies. This amount will be charged against fees earned under our agreement of July 28, 1954 with respect to the Income Tax deficiency proposed against you by the United States Government.

October 7, 1957

Mr. Harry Edell
c/o University Club
1135 16th Street, N. W.
Washington 6, D. C.

As per our agreement -- 30% of difference between
\$183,000 (best offer) and \$150,000 (determined by

Court)	\$ 9,900.00
Disbursements (schedule attached)	1,003.50
	<u>\$10,903.50</u>

This firm retains \$2,500.00 which was received and reported as a retainer for the settlement of tax deficiencies. This amount will be charged against fees earned under our agreement of July 28, 1954 with respect to the Income Tax deficiency proposed against you by the United States Government.

October 7, 1957

DisbursementsE. J. Brady:

7th October, 1955 Travel to Providence	\$ 35.77
18th October, 1955 Travel to Washington	50.00
14th November, 1955 Travel to Worcester	50.00
14th November, 1955 U. S. Treasury	100.00
15th December, 1955 Travel to Washington	50.00
1st January, 1956 Travel to Washington	50.00
1st February, 1956 Travel to Washington	48.00
1st April, 1956 Travel to Washington	50.00
October, 1957 Travel to Washington (2 trips)	100.28
	<u>\$ 534.55</u>

W. J. Casey:

1st September, 1955 Travel to Washington	50.00
1st December, 1955 Travel to Washington	50.00
1st March, 1956 Travel to Washington	50.00
1st April, 1956 Travel to Washington	50.00
3rd February, 1956 Travel to Washington	46.00

Disbursements, W. J. Casey (Cont'd)

Telephone calls	\$ 200.00	
Photostats	30.80	
Thermo-Fax Paper - re Stipulation	55.41	
9th May, 1956 Trial - car fare and misc.		
expenses	113.80	
Additional transcript charges	21.93	
		<u>\$ 568.95</u>
		<u>\$ 1,003.50</u>

October 19, 1956

Mr. Harry Edell
University Club
1135 16th Street N.W.
Washington 6, D. C.

Third Invoice

Per statement of May 29, 1956	\$ 1,266.18
Additional disbursements which included National Reporter System for the report of the trial	208.83
Leonard Cordes, expert witness fee paid by me.	<u>600.00</u>
	\$ 2,075.01

July 10, 1956

Mr. Harry Edell
University Club
1135 16th Street, N.W.
Washington 6, D. C.

Second Invoice

Due per statement of May 29, 1956	\$ 1,266.18
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May 29th, 1956

Mr. Harry Edell
University Club
1135 16th Street N.W.
Washington 6, D. C.

E. J. Brady:

7th October, 1955 Travel to Providence	\$ 35.77
18th October, 1955 Travel to Washington	50.00
14th November, 1955 Travel to Worcester	50.00
14th November, 1955 U. S. Treasury	100.00
15th December, 1955 Travel to Washington	50.00
1st January, 1956 Travel to Washington	50.00
1st February, 1956 Travel to Washington	48.00
1st April, 1956 Travel to Washington	50.00
	<u>\$ 434.27</u>

W. J. Casey:

1st September, 1955 Travel to Washington	50.00
1st December, 1955 Travel to Washington	50.00
1st March, 1956 Travel to Washington	50.00
1st April, 1956 Travel to Washington	50.00
3rd February, 1956 Travel to Washington	46.00
Telephone calls	200.00
Photostats	30.80
Thermo-Fax Paper - re Stipulation	55.41
Transcript of Record 534 pages at 35¢ per page	186.90
9th May, 1956 Trial - car fare and misc. expenses	112.80
	<u>\$1266.18</u>

May 29th, 1956

Mr. Harry Edell
University Club
1135 16th Street N.W.
Washington, D. C.

Dear Mr. Edell:

A temporary girl sent a letter to you yesterday which was incomplete.

I enclose a new draft with all the documents which were referred to in the letter.

Yours,

PLAINTIFF'S EXHIBIT NO. 20

February 18, 1959

Mr. Harry Edell
 Kenwood Golf & Country Club
 Bethesda, Maryland

Dear Harry:

Now that your tax and renegotiation liabilities have been finally settled, pursuant to the decision which we got in the Tax Court on the renegotiation claim and the settlement which we effectuated with the Internal Revenue Service in New York, the fee owing to us under our agreement should be paid to us promptly. We have been carrying this case since August 1954.

When we became entitled to \$9,900 plus expenses under our renegotiation retainer, you said that you wanted to defer payment until the tax deficiency had been settled. The time is now.

Under our retainer in the renegotiation case we are entitled to the difference between \$183,000, which was the best offer made by the Justice Department, and \$150,000 determined to be excess profits by the Tax Court. This represents a saving of \$33,000 of which we are entitled to 30%, or \$9,900.

With respect to your tax obligations, we effected a settlement which resulted in savings to you as compared to the deficiency asserted by the Government, after giving effect to the renegotiation credits in the following amounts:

For 1943. . .	\$ 2,366.15
of which we are	
entitled to	\$ 709.85
For 1944. . .	\$11,641.87
of which we are entitled to	\$3,492.56
For 1945. . .	\$14,704.65
of which we are entitled to	\$4,411.40

We are sending, under separate cover, a photostat of the calculations in which the above figures were arrived at. These calculations were reviewed and approved by Laurens Williams and his associate, Kenneth Liles.

The total tax saving for the three years amounted to \$28,712.67, of which we are entitled to 30%, or \$8,613.81. Thus, the total amount which you owe us is as follows:

Pursuant to retainer

On renegotiation case . . .	\$ 9,900.00
On tax negotiations. . .	8,613.81
Disbursements on your behalf. . .	<u>1,021.95</u>
	\$19,535.76
Less: Retainer	<u>2,500.00</u>
Amount due. . .	<u><u>\$17,035.76</u></u>

Yours sincerely,

* * *

PLAINTIFF'S EXHIBIT NO. 21

May 14, 1959

Mr. Harry Edell
5601 River Road
Washington 16, D. C.

Dear Harry:

I take it you didn't get up to New York during April as you thought you would. When you dropped me a note several weeks ago. How can we now best dispose of our bill for services completed in your renegotiation and tax matters?

Yours sincerely,

* * *

PLAINTIFF'S EXHIBIT NO. 22

March 31, 1959

Mr. Harry Edell
Kenwood Golf & Country Club
Bethesda, Maryland

Dear Harry:

We haven't heard a whisper from you about paying our bill. I am going to be in Washington on Thursday and will try again to get in touch with you at the Country Club.

We don't like to do this but if we don't hear anything more from you we will have no alternative but to engage an attorney in Washington to enforce our rights.

Yours sincerely,

PLAINTIFF'S EXHIBIT NO. 24POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That I, Harry Edell, The University Club, 1135 Sixteenth St., N.W., Washington, D. C. (formerly Hotel Woodward, Broadway and 55th St., New York, N. Y.) hereby revoke all powers of attorney previously made by me with reference to the matters which are the subject of this power, and hereby make, constitute and appoint, with full power of substitution, Laurens Williams, Esq., and Kenneth H. Liles, Esq., each of 602 Ring Building, Washington, D. C., and William J. Casey, Esq., and Edward J. Brady, Esq., each of 122 East 42nd St., New York 17, N. Y., as my true and lawful attorneys in fact and in law to represent me before the Internal Revenue Service, United States Treasury Department, in connection with my federal income tax matters for the calendar years 1942 through 1946; and to request of and receive from the Internal Revenue Service, United States Treasury Department, such documents or copies thereof as I may be entitled under the law and the regulations to demand

and receive; hereby giving and granting unto said attorneys full power and authority to do and perform all and every act or thing whatsoever requisite or necessary in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof.

I further hereby make, constitute and appoint Edwin M. Appel, C.P.A., and Arthur J. Dixon, C.P.A., each of 33 Rector Street, New York 6, N. Y., as my true and lawful agents, with full power of substitution, to represent me before the Internal Revenue Service, United States Treasury Department, in connection with my federal income tax matters for the calendar year 1946.

And I hereby request and direct that all correspondence, documents, and other data in connection with the matters covered by this power of attorney be sent to me in care of my said attorney, Edward J. Brady, Esq.

Executed this 20th day of May, 1958.

/s/ Harry Edell

Witness:

/s/ Helen J. Gretz

/s/ Kathryn J. Plummer

PLAINTIFF'S EXHIBIT NO. 25

September 17, 1958

Mr. David Korr
Appellate Staff
District Director of Internal Revenue
90 Church Street
New York, New York

Re: Harry Edell

Dear Mr. Korr:

I finally got back to my desk after a three week vacation. I have re-

ceived notices of your phone calls and also have received a letter from Laurens Williams concerning the Harry Edell tax case for the years 1943-45. As soon as I receive word from Williams that tax liability for the year 1946 has been determined, I will immediately contact you so that we can close out the years of the tax-payer that we are concerned with.

I know that is getting to be a sought of cart-before-horse situation, but you realize, of course, my hands are tied in this matter. Hoping you will bear with me in this matter.

Very truly yours,

* * *

PLAINTIFF'S EXHIBIT NO. 26

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

August 29, 1957

William J. Casey, Esquire
Hall, Casey and Robinson
122 East 42nd Street
New York 17, New York

Re: United States v. Harry Edell
(D.C.S.D. N. Y., Civil No. 60-43)

Dear Mr. Casey:

As you are undoubtedly aware, in June of 1952 when Harry Edell was represented by the law firm of Pitman and Roberts as well as Douglas M. Amann, Esquire, of 25 Broad Street, New York, an escrow agreement was executed by Mr. Edell and the Assistant Attorney General under the terms of which common stocks having a value then in excess of \$200,000 were posted as security with a bank for Mr. Edell's renegotiation indebtedness pending the conclusion of the Tax Court proceeding filed against the United States by Mr. Edell.

The escrow agreement, among other things, provided, in paragraph 5, that if the Tax Court redetermined the Edell partnership's

excessive profits in an amount less than the War Contracts Price Adjustment Board, Edell would pay to the United States the redetermined amount of excessive profits less applicable tax credits plus interest at the rate of 4% per annum from June 29, 1949 to and including March 21, 1952 (the date of entry of judgment in the above District Court proceeding awarding 4% interest) plus interest at the rate of 6% per annum from March 22, 1952 until the date of payment. Paragraph 5 also provided that Mr. Edell would make any payment becoming due according to paragraph 5 thirty days after the redetermination by the Tax Court shall have become final and not subject to appeal and after redetermination of applicable tax credit shall have been made.

As you know, the Tax Court, be decisions in accordance with its June 10, 1957 opinion, on that date ordered and determined that the Edell partnership had realized excessive profits in the respective amounts of \$26,000, \$54,000 and \$70,000 for the respective fiscal years ended December 31, 1943, December 31, 1944 and December 31, 1945. Assuming that you do not intend to make efforts to appeal the Tax Court decisions, the decisions apparently will become final not later than September 8, 1957, ninety days after the Tax Court decisions.

By letters dated August 26, 1957 from the District Director of Internal Revenue, 245 West Houston Street, New York, New York, to the Department of the Army, the Director, based on the excessive profits as determined by the Tax Court, determined that the applicable tax credits for the years 1943, 1944 and 1945 were in the respective amounts of \$7,966.44, \$28,909.38 and \$35,897.90.

Thus, in view of the language of paragraph 5 of the escrow agreement, the amounts due for the years 1943, 1944, and 1945 will be payable by Mr. Edell on or before October 8, 1957.

There is attached hereto a schedule showing the Department of the Army's computation of the total indebtedness including accrued 4% and 6% interest for each year as of August 31, 1957. The schedule also shows the daily rate of accrued 6% interest, thus enabling Mr. Edell to compute the additional 6% interest due daily after August 31, 1957.

As you know, the escrow agent was changed subsequent to 1952 to the present agent, American Security & Trust Company, Washington, D. C.

If you find you are in agreement with the figures contained in the attached schedule, we suggest that payment might most easily be made in the manner envisioned by paragraph 2 of the escrow agreement which authorizes the bank to deliver proceeds of the securities in accordance with joint instructions which it may receive from Mr. Edell and the Department of Justice. Such joint instructions might well direct the bank to sell named securities in an amount sufficient to pay the indebtedness and to make payment of such amount by check payable to the Treasurer of the United States to be delivered to the Department of Justice.

We should appreciate hearing from you in connection with the above suggestions.

Yours very truly,

GEORGE COCHRAN DOUB
Assistant Attorney General
Civil Division

By Donald B. MacGuineas
Chief, General Litigation Section

Enclosure

cc: Department of the Army
Washington 25, D. C.
Attention: Judge Advocate General

Department of the Army
Renegotiation Collection Division
Office of Director
Contract Finance
Comptroller of the Army
Washington 25, D. C.
Attention: Mrs. A. M. Clancy

Paul W. Williams, Esquire
United States Attorney
New York, New York
Attention: Harold J. Raby, Esquire
Assistant U. S. Attorney

HARRY EDELL - RENEGOTIATION INDEBTEDNESS

1943

Excessive Profits	\$ 26,000.00
Tax Credit	7,966.44
Principal debt	<u>\$ 18,033.56</u>
Interest at 4% per annum from June 29, 1949 to and including March 21, 1952 (995 days) at daily rate of \$1.97628	\$ 1,966.40
Interest at 6% per annum from March 22, 1952 to and including August 31, 1957 (1,988 days) at daily rate of \$2.96442	<u>\$ 5,893.27</u>
Total debt as of August 31, 1957	\$ 25,893.23

1944

Excessive Profits	\$ 54,000.00
Tax Credit	28,909.38
Principal debt	<u>\$ 25,090.62</u>
Interest at 4% per annum from June 29, 1949 to and including March 21, 1952 (995 days) at daily rate of \$2.74966	\$ 2,735.91
Interest at 6% per annum from March 22, 1952 to and including August 31, 1957 (1,988 days) at daily rate of \$4.12449	<u>8,199.49</u>
Total debt as of August 31, 1957	\$ 36,026.02

1945

Excessive profits	\$ 70,000.00
Tax Credit	\$ 35,897.90
Principal debt	<u>\$ 34,102.10</u>
Interest at 4% per annum from June 29, 1949 to and including March 21, 1952 (995 days) at daily rate of \$3.73722	\$ 3,718.53
Interest at 6% per annum from March 22, 1952 to and including August 31, 1957 (1,988 days) at daily rate of \$5.60582	<u>\$ 11,144.37</u>
Total debt as of August 31, 1957	\$ 48,965.00

PLAINTIFF'S EXHIBIT NO. 27In re: Harry Edell

4/21/54

Settlement Proposed by J. H.
Prentice December 16, 1953

<u>1943</u>	<u>Total</u>	<u>Non-Renego- tiable</u>	<u>Renegotiable</u>
Commissions (cash)	\$ 52,640.44	\$ 2,114.09	\$ 50,526.33
Per cent	100%	4,0161%	95.9839%
Expenses (estimated) exclusive of salary for H. Edell	15,000.00	600.00	14,400.00
Profit	37,640.00	1,514.00	36,126.00
Reasonable profit	_____	_____	<u>24,126.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	\$ 12,000.00
<u>1944</u>			
Commissions (cash)	\$112,184.71	\$ 9,533.77	\$102,650.94
Percent	100%	8.498%	91.502%
Expenses (estimated) exclusive of salary for H. Edell	20,000.00	1,700.	18,300.00
Profit	92,184.00	7,834.00	84,350.00
Reasonable profit	_____	_____	<u>27,350.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	<u>57,000.00</u>
<u>1945</u>			
Commissions (cash and unpaid accruals as of December 31, 1945)	\$216,125.90	\$37,091.93	\$179,033.97

<u>1945</u>	<u>Total</u>	<u>Non-Renego-</u> <u>tiable</u>	<u>Renegotiable</u>
Per cent	100%	17.163%	82.837%
Unallocated			
Expenses (estimated) exclusive of salary for H. Edell	25,000.00	4,300.00	20,700.00
Legal expenses (Supply Mfg. Co.) chargeable to renegotiable	6,666.67		6,666.57
Legal expenses (Wiley-Bickford- Sweet) chargeable to renegotiable	4,500.00		4,500.00
Profit	179,958.00	32,792.00	147,166.00
Reasonable profit			<u>33,166.00</u>
Excess profit to be eliminated subject to tax credit			<u>\$114,000.00</u>

PLAINTIFF'S EXHIBIT NO. 28COMPUTATION OF ATTORNEY'S FEES BASED ON NET
DOLLAR SAVINGS IN RENEGOTIATION CASE

A. Final Gross Settlement Offer By U. S. Department of Justice	
Amounted to -----	\$ 183,000.00
Less: Credit for Taxes Paid on That Amount-----	<u>- 71,104.03</u>
Net Amount Due -----	\$ 111,895.97
Add: Interest on Net Amount Due (Thru 3/21/54)-----	25,630.63
Net Cost to Defendant-----	\$ 137,526.60

PLAINTIFF'S EXHIBIT NO. 27In re: Harry Edell

4/21/54

Settlement Proposed by J. H.
Prentice December 16, 1953

<u>1943</u>	<u>Total</u>	<u>Non-Renego- tiable</u>	<u>Renegotiable</u>
Commissions (cash)	\$ 52,640.44	\$ 2,114.09	\$ 50,526.33
Per cent	100%	4,0161%	95.9839%
Expenses (estimated) exclusive of salary for H. Edell	15,000.00	600.00	14,400.00
Profit	37,640.00	1,514.00	36,126.00
Reasonable profit	_____	_____	<u>24,126.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	\$ 12,000.00
<u>1944</u>			
Commissions (cash)	\$112,184.71	\$ 9,533.77	\$102,650.94
Percent	100%	8.498%	91.502%
Expenses (estimated) exclusive of salary for H. Edell	20,000.00	1,700.	18,300.00
Profit	92,184.00	7,834.00	84,350.00
Reasonable profit	_____	_____	<u>27,350.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	<u>57,000.00</u>
<u>1945</u>			
Commissions (cash and unpaid accruals as of December 31, 1945)	\$216,125.90	\$37,091.93	\$179,033.97

<u>1945</u>	<u>Total</u>	<u>Non-Renego-</u> <u>tiable</u>	<u>Renegotiable</u>
Per cent	100%	17.163%	82.837%
Unallocated			
Expenses (estimated) exclusive of salary for H. Edell	25,000.00	4,300.00	20,700.00
Legal expenses (Supply Mfg. Co.) chargeable to renegotiable	6,666.67		6,666.57
Legal expenses (Wiley-Bickford- Sweet) chargeable to renegotiable	4,500.00		4,500.00
Profit	179,958.00	32,792.00	147,166.00
Reasonable profit			<u>33,166.00</u>
Excess profit to be eliminated subject to tax credit			<u>\$114,000.00</u>

PLAINTIFF'S EXHIBIT NO. 28

COMPUTATION OF ATTORNEY'S FEES BASED ON NET DOLLAR SAVINGS IN RENEGOTIATION CASE

A. Final Gross Settlement Offer By U. S. Department of Justice

Amounted to -----\$ 183,000.00

Less: Credit for Taxes Paid

on That Amount----- - 71,104.03

Net Amount Due -----\$ 111,895.97

Add: Interest on Net Amount Due

(Thru 3/21/54)----- 25,630.63

Net Cost to Defendant-----\$ 137,526.60

B. Judgment of U. S. Tax Court Court After Trial

Amounted to ----- \$150,000.00

Less: Credit for Taxes Paid on
on that Amount----- -72,773.72

Net Amount Due ----- \$ 77,226.28

Add: Interest on Net Amount Due
(Thru 3/21/54)----- 24,390.81Net Cost to Defendant----- 101,617.09

C. Savings Obtained by Office of Attorney Casey-- \$ 35,909.51

D. Percent of Savings Due Attorney Under Fee
Agreement of August 6, 1954----- X 30%E. Dollar Amount Owed Attorney Under Fee
Agreement of August 6, 1954----- \$ 10,772.85

PLAINTIFF'S EXHIBIT NO. 32

November 21, 1955

Mr. Harry Edell
Westchester Apartments, Apt. 755B
Washington, D. C.

Dear Mr. Edell:

I have just returned to the office after being out of town for about a week, and I decided to write you a few of the things that took place on my trip to Worcester. Joe Hearn and Jack Owens are very fine gentlemen and gave me their time very willingly. Both have high regard for the work which you performed for the company, and both are willing to testify on your behalf.

I obtained a breakdown from Jack Owens concerning the amount of renegotiation business which the company did during the years 1943-1945, and the amount of non-renegotiation business which the company did during this period. The Government also obtained this same information some years ago. In regard to your contract with Brewer and Company,

it seems to me that it was back dated, that is, most likely made up a year after you were employed by the company. To refresh your memory on this matter, the contract is dated July 13, 1943 and states that you will receive \$300 a week as drawings. The actual fact of the matter is that in July, 1943 the Company paid you \$50 a week until January, 1944, then paid you \$200 a week until the middle of October. After that you received \$300 a week. There is nothing to worry about on this account, since we will be able to say that the arrangement was finally reduced to writing a year after it had been entered into. Also, in the same contract there are agencies mentioned that were not in existence as of July 13, 1943. There is no need to worry on this matter, but I just merely tell it to you so that it will not come as a shock later on.

I intend to see Prentice tomorrow, and I will write to you later on these developments.

Yours,

EJB/vm

PLAINTIFF'S EXHIBIT NO. 33

October 6, 1955

Mr. Sammuel West
792 Sterling Place
Brooklyn, New York

Dear Mr. West:

We represent one Harry Edell in a renegotiation case which the Government has brought against him. It is the Governments contention that all Mr. Edell did for certain companies was to secure government contracts connected with the war effort. It is our contention that Mr. Edell helped the production end of the companies which he represented, and also aided them in setting up proper procedure to compete in a war effort.

This office called you some time last week and was told to write you regarding the nature of the call. We would like to have you visit us at your convenience to discuss some of the things outlined in the barest details above, or if this is not convenient, we would like to have one of the associates of this office come to your place of business.

* * *

Very truly yours,

PLAINTIFF'S EXHIBIT NO. 34

BREWER & COMPANY INC.
PHARMACEUTICAL CHEMISTS

67 Union Street

Worcester 8, Massachusetts, USA

October 27, 1955

WILLIAM J. CASEY
60 East 42nd Street
New York 17, New York

Att: Mr. Edward J. Brady

Dear Mr. Brady:

I will be very willing to discuss with an associate of yours, matters pertaining to Harry Edell as they apply to work and duties that he performed while soliciting business for our company during the years 1943-1945.

I would suggest that your associate phone me the day before he plans on coming over to make certain that I have not been called out of town.

Very truly yours,

BREWER & COMPANY, INC.

/s/ Jos. C. Hearn
Sales Manager

* * *

P.S. Please note that our present address is 67 Union Street, Worcester 8, Mass.

PLAINTIFF'S EXHIBIT NO. 37

LOWENSTEIN, PITCHER, AMANN & PARR
25 BROAD STREET, NEW YORK

* * *

* * *

March 8, 1954

Mr. Harry Edell
Plaza Hotel
Fifth Avenue and 59th Street
New York, New York

Dear Mr. Edell:

In reply to your letter of March 3d I wish to advise you as follows:

The Department of Internal Revenue by 30 day letter dated August 26, 1949 proposed the following assessment of taxes against you:

Year: 1943 Deficiency - Income Tax	\$ 19,393.81
Year: 1944 Deficiency - Income Tax	50,712.85
Year: 1945 Deficiency - Income Tax	<u>105,837.63</u>
Total Additional Tax	\$ 175,944.29

The Department has, by assessment dated July 27, 1950, assessed against you a sum of \$59,211.40 being principal of deficiency in 1946 tax. Interest has been accruing on the 1946 assessment at the rate of 6% per annum from March 15, 1947.

Our office has been negotiating with the Internal Revenue Agent in an attempt to reach a compromise of your tax liability for the years 1942 through 1945 which must be adjusted before any action can be taken with respect to the tax liability for subsequent years. If the Internal Revenue Agent should be willing to allow the same sums as expenses which were allowed by the Department of Justice in their latest offer of settlement in the renegotiation matter your tax liability would be approximately as follows:

1943	\$10,280.65
1944	14,823.86
1945	15,960.32

These assessments would, of course, bear interest at the rate of 6% per annum from the respective due dates of the tax. Additionally, it may be that the Department will seek to impose penalties because of violation of the Current Tax Payment Act.

In addition to the foregoing there will exist a tax liability on the part of your brother's estate aggregating approximately \$3,000 with interest for approximately ten years at 6%.

You will understand, of course, that there is no guaranty that the Internal Revenue Department will accept the items of expense which have been allowed by the Department of Justice. In the absence of definitive advices from them, however, there is no other basis on which I can calculate your approximate tax liability.

As I advised you over the telephone, Mr. Morris Weiss who is handling this matter in the Department of Internal Revenue, has taken a short leave and it will be impossible for me to continue the discussions I am having with him until approximately two weeks from now.

If there is any further information you desire I shall be glad to furnish it to you.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By: /s/Douglas M. Amann

* * *

PLAINTIFF'S EXHIBIT NO. 38

<u>B.A.R.</u>	<u>Assessment</u>	<u>Reported Paid</u>	<u>Alleged Total Tax</u>
1943	\$ 19,393.81	\$ 1,215.59	\$ 20,609.40
1944	50,712.85	18,390.07	69,102.92
1945	<u>105,837.63</u>	<u>23,316.80</u>	<u>129,154.43</u>
Total Assessment	\$ 175,944.29	\$ 42,922.46	\$218,866.75

After Tax Court - (Renegotiation)

1943	\$ 16,406.52
1944	32,907.71
1945	<u>75,297.19</u>
	<u>\$124,611.42</u>

Settlement after Tax Court

1943	\$ 14,040.37
1944	21,265.84
1945	<u>62,592.54</u>
	<u>\$ 97,898.75</u>
Difference	26,712.67
	<u>30%</u>
	\$ 8,013.80

PLAINTIFF'S EXHIBIT NO. 39

Saturday, April 4, 1959

Wm. C. Casey, Atty.
Chanin Building
42nd St. & Lexington Ave.
N. Y. C.

Dear Sir,

Since I did not hear from Mr. Brady on Thursday, I assume he did not get to Washington as planned. This note is to assure you I have not intended to ignore your letters.

However, due to the recent deaths of my sister and brother I have been under considerable strain but expect to be in N. Y. before the end of the month and will get in touch with you.

Yours truly,
/s/ Harry Edell

PLAINTIFF'S EXHIBIT NO. 40

Mailed to: 5601 River Road
Washington 16, D. C.

April 9, 1959

Mr. Harry Edell
c/o Kenwood Golf and Country Club
Bethesda 14, Maryland

Dear Harry:

Was glad to get your note. Ed Brady was grounded on Thursday and postponed his trip until Saturday. He tells me that he called you at the Club but you weren't there.

I am sorry that we assumed that our letters were being ignored but I am glad to have your assurance that that is not the case. You'll agree that we carried the load on this matter for a long time without getting paid and you will understand our anxiety to have this situation rectified.

I am sorry to hear about the deaths of your sister and brother.

I look forward to seeing you on your trip to New York which you expect to make sometime this month.

Yours sincerely

* * *

PLAINTIFF'S EXHIBIT NO. 47

PITTMAN & ROBERTS
ATTORNEYS AT LAW
WASHINGTON 5, D. C.

* * *

March 1, 1951

* * *

Mr. Harry Edell
Woodward Hotel
Broadway and 55th Street
New York 19, New York

Dear Mr. Edell:

Reference is made to our conversation this morning concerning your renegotiation case pending before the Tax Court.

It is understood that this form will have nothing whatsoever to do with the settlement of your income taxes presently being audited by the Collector of Internal Revenue in New York City.

We will continue our negotiations with the Department of Justice and endeavor to work out a stipulation concerning your renegotiation liability. When these conferences have been concluded, we will communicate with you directly for your approval, and if our proposal is satisfactory to you, a stipulation will be entered which will be the basis of a final order in the Tax Court which will include the amount of the excess profits due by you.

You will find enclosed a statement from Mr. Clyde B. Stovall for services rendered to date, less the retainer you had previously forwarded to him. We conferred with Mr. Stovall this morning concerning the possible additional work necessary to complete the Tax Court case and we feel that you should forward an additional \$1,500 which will be subject to the original agreement between you and Mr. Stovall, and any amount that is not necessary to the further prosecution of your case will be returned when the matter has been terminated.

As you will recall there remains a balance due of \$3,500 on our agreed fee with the firm of Pittman & Roberts, and I would appreciate your forwarding us half of this amount at the present time.

With warm personal regards, I am

Sincerely yours,
/s/ Ralph D. Pittman

* * *

PLAINTIFF'S EXHIBIT NO. 50

Lowenstein, Pitcher, Amann & Parr

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* * *

July 27, 1954

William J. Casey, Esq.,
60 East 42nd Street
New York City, N.Y.

Dear Mr. Casey:

At the request of Mr. Harry Edell I am sending to you here-
with Mr. Edell's correspondence files as follows:

Brewer & Company, Inc.	-	1943
" "	-	1944
" "	-	1945
" "	-	1946 and 1947
Wiley-Bickford-Sweet Corp.	-	1943
" "	-	1944
" "	-	1945
Colonial Knife Company	-	1943
" "	-	1944
" "	-	1945
Supply Manufacturing Co. Inc.	-	1942-1943
Atlantic Knitting Co.	-	1943, 1944 and 1945
Artex-Green Corp.	-	1943, 1944 and 1945
Dodge Textile Manufacturing Co.	-	1942-1943
William Gluckinn Inc. Co.	-	1943-1944
LMRV Manufacturing Corp.	-	1943-1944-1945

We are further enclosing a folder entitled "Classification
List Bureau of Supplies & Accounts" and a folder entitled "Blue
Prints-Colonial Knife" which were delivered to us by Mr. Edell.

We are further enclosing papers of Mr. Edell and photostats of his tax returns which we had segregated into various sub-folders for ease in working with them, as follows:

Harry Edell-	activity memo
" "	- 1943 Federal taxes
" "	- 1944 Federal taxes
" "	- 1945 Federal taxes
" "	- 1946 Federal taxes
" "	- 1947 taxes
" "	- Myrna Edell taxes
" "	- Davis Edell taxes
" "	- Partnership returns, protest, etc.
" "	- Miscellaneous tax correspondence.
" "	- Revenue Agent's Report 1943 through 1945
" "	- Dorothy Nass - brokerage account statements
" "	- Sadie Keve - brokerage account statements
" "	- Brokerage account statements
" "	- New York State taxes and miscellaneous
" "	- Bank statements
" "	- Renegotiation client's papers

We further enclose photostats of a series of letters exchanged between Pittman & Roberts and Harry Edell, relative to the charges of the firm of Pittman & Roberts and the firm of C.B. Stovall & Co. This matter, as you know, remains unresolved.

Further enclosed is a photostat of the work sheets of C.B. Stovall & Co. breaking down by client Edell's commission receipts and also segregating them as between the several various rates of commission received by Edell.

Duplicate original forms 872 relative to Mr. Edell's Federal Income tax returns for the years ended December 31, 1943, 1944 and 1945 extending the period for assessment relative to such years to June 30, 1955 are also enclosed.

You will note that many of the letters in the Harry Edell correspondence file have a lead pencil number in the lower lefthand corner. This number indicates that the FBI during their investigation

of Mr. Edell made a photostat of this letter because they considered it important to the Government's contention that Edell actually did solicit government orders, thus bringing him outside the rule (according to their contention) of the Fine case.

We are also sending you Mr. Edell's Diary for 1943 and a group of checkbooks and travel vouchers for the year 1946 which he delivered to us, together with a typewritten summary which we had made of these latter items. All of Mr. Edell's correspondence, as well as his Diary, have been examined by the FBI in connection with the renegotiation matter and additionally, the Diary has been submitted to the Internal Revenue Department in connection with the audit of his 1943 income tax return.

Will you please acknowledge receipt of the documents mentioned above by signing the duplicate copy of this letter.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By: /s/ Douglas M. Amann

DMA:mch
Enclosures
By Hand

DEFENDANT'S EXHIBIT NO. 8

Law Office of
WILLIAM J. CASEY

* * * * *

August 17, 1954

Mr. Harry Edell
Hotel Mayflower
Washington, D.C.

Dear Mr. Edell:

Supplementing the letter agreement between you and me, dated July 28, 1954, I hereby make to you the following additional commitments:

1. You tell me that you are entitled to a refund of \$7,500 for overpayment of taxes in 1946 and that this amount is being withheld by the Internal Revenue Service for possible application against the tax deficiencies charged against you for previous years. To the degree that the amount of this refund is reflected in the final settlement of your tax liability for the years covered by our agreement of July 28, 1954, the percentage compensation stipulated for me in that agreement shall not apply. Thus, if the payment of additional taxes required of you should be reduced by the amount of the \$7,500 overpayment previously made, my percentage compensation will not apply to that portion of the reduction, but only to the difference between the deficiency presently assessed against you and the amount of tax liability ultimately determined for the years covered by the retainer agreement.
2. It is understood that I am not authorized to make any final settlement without your explicit approval.

Yours very truly,

/s/ William J. Casey

WJC:MG

I hereby accept the foregoing commitments as supplementary to the agreement between us, dated July 28, 1954. August 17, 1954

/s/ Harry Edell

DEFENDANT'S EXHIBIT NO. 9

October 7, 1957

Mr. Harry Edell
c/o University Club
1135 16th Street, N.W.
Washington 6, D.C.

HALL, CASEY & ROBINSON

* * *

For Professional Services Rendered	
As per our agreement -- 30% of difference between	
\$183,000 (best offer) and \$150,000 (determined by	
Court)	\$ 9,900.00
Disbursements (schedule attached)	<u>1,003.50</u>
	<u>\$10,903.50</u>

This firm retains \$2,500.00 which was received and reported as a retainer for the settlement of tax deficiencies. This amount will be charged against fees earned under our agreement of July 28, 1954 with respect to the Income Tax deficiency proposed against you by the United States Government.

DEFENDANT'S EXHIBIT NO. 10

Law Offices
HALL, CASEY, DICKLER & BRADY

* * *

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* * *

February 18, 1959

Mr. Harry Edell
Kenwood Golf & Country Club
Bethesda, Maryland

Dear Harry:

Now that your tax and renegotiation liabilities have been finally settled, pursuant to the decision which we got in the Tax Court on the

renegotiation claim and the settlement which we effectuated with the Internal Revenue Service in New York, the fee owing to us under our agreement should be paid to us promptly. We have been carrying this case since August 1954.

When we became entitled to \$9,900 plus expenses under our renegotiation retainer, you said that you wanted to defer payment until the tax deficiency had been settled. The time is now.

Under our retainer in the renegotiation case we are entitled to the difference between \$183,000, which was the best offer made by the Justice Department, and \$150,000, determined to be excess profits by the Tax Court. This represents a saving of \$33,000 of which we are entitled to 30%, or \$9,900.

With respect to your tax obligations, we effected a settlement which resulted in savings to you as compared to the deficiency asserted by the Government, after giving effect to the renegotiation credits in the following amounts:

For 1943 . . .	\$ 2,366.15	
of which we are		
entitled to		\$ 709.85
For 1944	\$11,641.87	
of which we are		
entitled to		\$ 3,492.56
For 1945	\$14,704.65	
of which we are		
entitled to		\$ 4,411.40

We are sending, under separate cover, a photostat of the calculations in which the above figures were arrived at. These calculations were reviewed and approved by Laurens Williams and his associate, Kenneth Liles.

The total tax saving for the three years amounted to \$28,712.67, of which we are entitled to 30%, or \$8,613.81. Thus, the total amount which you owe us is as follows:

Pursuant to retainer

On renegotiation case	\$ 9,900.00
On tax negotiations	8,613.81
Disbursements on your behalf	<u>1,021.95</u>
	\$19,535.76
Less: Retainer	<u>2,500.00</u>
Amount due	<u><u>\$17,035.76</u></u>

Yours sincerely,
/s/ Bill Casey

WJC:bck

DEFENDANT'S EXHIBIT NO. 11

Law Office of
WILLIAM J. CASEY

* * *

* * *

May 25, 1956

Mr. Harry Edell
5601 River Road, N.W. [c/o University Club, Washington, D.C.]
Washington, D.C.

Dear Harry:

I was in Washington last Friday to finalize the financial stipulation and file it with the Tax Court. I am enclosing a copy, which breaks the stipulated net profits down by years. On this basis, the Treasury has agreed that you are entitled to compensation of \$9000 in 1943, \$21,000 in 1944 and \$30,000 in 1945.

I have your suggestions about the brief, and you can be sure that I will go over it in draft form with you before it is filed. You understand that in the preparation of the brief, we are confined to those things which were put on the record, so that we can't shove additional evidence into the brief.

I am enclosing a check for the long distance charges incurred by me in the Raleigh Hotel. There is no sense in my giving you a check for the room and restaurant charges, and then billing them back to you as part of the expenses of handling the trial.

I will need money to pay for the services of our experts and also to reimburse us for expenses in traveling to Worcester, Providence and Washington in handling this matter. I enclose a bill for these expenses, and as soon as I get a bill from Porter and Cordes I will bill you for that amount.

Yours,

WJC-jh
Enclosures

DEFENDANT'S EXHIBIT NO. 14

**TREASURY DEPARTMENT
Internal Revenue Service**

Office of
Internal Revenue Agent in Charge
2nd N.Y. Division
90 Church Street, N.Y.C. - 7

August 26, 1949

Mr. Harry Edell,
66 Leonard Street,
New York 13, N.Y.

Dear Mr. Edell:

I enclose a copy of the report of the examination of your income-tax returns for the years shown below. After consideration by this office, the following adjustments of your tax liability appears to be warranted, for the reasons stated in the report:

Year: 1943	Deficiency - Income Tax	\$ 19,393.81
Year: 1944	Deficiency - Income Tax	50,712.85
Year: 1945	Deficiency - Income Tax	<u>105,837.63</u>
	Total Additional Tax	\$175,944.29

IF YOU AGREE to this adjustment, the enclosed form of waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and to stop the accumulation of interest. Such interest will cease 30 days after the receipt of the executed form, or upon the payment of the additional tax to the collector, whichever occurs first.

If you desire to make immediate payment of the additional tax without awaiting assessment, you should forward your remittance to the Collector of Internal Revenue at Custom House, New York 4, N.Y., enclosing this letter, or a copy thereof. Interest on the additional tax should be included in your remittance, computed at the rate of 6 percent per annum from the due date of the first installment to the date of payment.

IF YOU DO NOT AGREE to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you prior to final determination of any deficiency against you. This letter is not a final notice of deficiency, and this office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to pay the additional tax to the collector of internal revenue or to file with this office within the 30-day period mentioned either a waiver on the enclosed form or a written protest,

final determination of your tax liability will be made and a notice of deficiency will be sent you in accordance with the provisions of law applicable to the assessment and collection of income and profits-tax deficiencies.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

/s/ C.R. Krigbaum
Internal Revenue Agent in Charge

Enclosures:

Report of examination.
Form of waiver.
Form of acknowledgment.

DEFENDANT'S EXHIBIT NO. 15

U.S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
New York 7, N.Y.
90 Church Street

Mr. Harry Edell
c/o Kenwood Golf and Country Club
5601 River Road
Washington 16, D.C.

Dear Mr. Edell:

Your income tax liabilities for the taxable years ended December 31, 1943, December 31, 1944 and December 31, 1945 were made the subject of hearings before this office with your representative.

Your proposal for settlement of the tax controversy as evidenced by the signed agreement filed with this office has been accepted.

There is enclosed a statement of the tax liabilities reflecting the conclusions reached. The deficiencies indicated therein bear interest as provided by law.

A copy of this letter has been mailed to your representative, Laurens Williams, Esq., Ring Building, 18th and M Streets, N.W., Washington 6, D.C., in accordance with the authority contained in the power of attorney executed by you and on file with the District Director of Internal Revenue, Lower Manhattan District.

It is important that any inquiry or reply be addressed to the Associate Chief, Appellate Division, (symbols Ap;NY;DLK) Room 807, Federal Office Building, 90 Church Street, New York 7, New York.

Very truly yours,

/s/ Ellis L. Jackson
Associate Chief, Appellate Division

Enclosure:

Carbon copy of statement

AUDIT STATEMENT

In re: Mr. Harry Edell
c/o Kenwood Golf and Country Club
5601 River Road
Washington 16, D.C.

Preliminary letter dated August 26, 1949

TAX LIABILITY FOR TAXABLE YEARS ENDED
DECEMBER 31, 1943, DECEMBER 31, 1944
AND DECEMBER 31, 1945

INCOME TAX

<u>Year</u>	<u>Deficiency</u>
1943	\$14,040.37
1944	\$21,265.84
1945	\$62,592.59
Total	\$97,898.80

Consent Forms 872 executed June 4, 1957 are on file extending the statutory period for assessment for the taxable years ended December 31, 1943, December 31, 1944 and December 31, 1945 to June 30, 1958.

TAXABLE YEAR ENDED DECEMBER 31, 1943

Net income as shown in preliminary letter dated August 26, 1949 (Revenue Agent's Report dated July 25, 1949)	Income Tax <u>Net Income</u>	Victory Tax <u>Net Income</u>
	\$47,120.61	\$47,148.11

(a) Income from business	<u>32,052.67</u>	<u>32,052.67</u>
Net income as corrected	\$15,067.94	\$15,095.44

(a) Income reduced \$32,052.67

12/17/58

Total Unpaid 12/15/58 **\$16,380.89**

Total Unpaid **\$28,724.95**

<u>1945</u>	<u>Deficiency</u>	\$62,592.59	
	<u>Paid 10/24/58</u>	<u>30,000.00</u>	
	Unpaid Balance		\$ 32,592.59
	<u>Interest</u>		
	Interest on \$30,000 payment	\$22,694.38	
	Interest on balance to 12/15/58	<u>\$24,933.33</u>	
	Unpaid Interest 12/15/58		<u>\$47,627.71</u>
	Total Unpaid		<u>\$80,220.30</u>
<u>Less</u>	<u>Credit for 1946 Overpayment per Rev. Agt.</u>		
	1947 Principal	\$6104.90	
	Interest to 12/15/58	4251.93	
	1950 Payment	500.00	
	Interest to 12/15/58	<u>250.00</u>	
	Total		<u>\$11,106.83</u>
	Balance		<u>\$69,113.47</u>

Total Unpaid Principal of Deficiencies:

1943		\$ 4,040.37	
1944		11,265.84	
1945	\$32,592.59		
Credit	<u>6,604.90</u>	<u>25,987.69</u>	
(Which will bear interest to 1/4/59, and, if not paid on Demand, will thereafter bear interest, at daily rate of .001643 which is \$7.86988284)			\$41,293.90

Total Unpaid Interest as of 12/15/58

1943		\$12,340.52	
1944		17,459.11	
1945	\$47,627.71		
Credit	<u>4,500.93</u>	<u>43,126.78</u>	
			\$72,926.41

DEFENDANT'S EXHIBIT NO. 16

	1	2	3	4
	<u>Proposed</u>	<u>Final</u>	<u>Repaid as a</u>	
<u>Year</u>	<u>Deficiency</u>	<u>Settlement</u>	<u>Result of</u>	<u>Cash Loss</u>
			<u>Renegotiation</u>	
1943	\$19,393.81	\$14,040.37	\$32,052.67	(\$26,699.23)
1944	50,712.85	21,265.84	35,935.01	(6,488.00)
1945	105,837.63	62,592.59	47,192.85	(3,947.81)
Totals	\$175,944.29	\$97,898.80	\$115,180.53	(\$37,135.04)

SUMMARY

Col. 1	-	Proposed Deficiency	\$175,944.29	
Less: Col. 3	-	Amount repaid to U.S. Government	<u>115,180.53</u>	\$60,763.76
Less: Col. 2	-	Tax Actually paid (Final Settlement)		<u>97,898.80</u>
Balance Col. 4	-	Cash Loss to client		<u>(\$37,135.04)</u>

Explanation of Columns:

- Column #1 - Proposed Deficiency Income Tax, as per revenue agent's report dated 8/26/49
- Column #2 - Final Settlement Income Tax - as per revenue agent's report dated 12/16/58
- Column #3 - Amount refunded as a result of renegotiation - see adjustments revenue agent's report dated 12/16/58.

**ACTUAL INCOME TAX SETTLEMENT AND
SETTLEMENT PROPOSED BY PRENTICE TO AMANN
PER LETTER 3/8/54**

Final Settlement Income Tax	\$97,898.80
Less Proposal Re: Amann's letter dated 3/8/54	<u>41,064.83</u>
Additional Taxes Paid	\$56,833.97
Less: Savings in renegotiation	<u>33,000.00</u>
Additional cash paid over Prentice proposal	\$23,833.97

[Filed February 19, 1963]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WILLIAM J. CASEY

Plaintiff

v.

HARRY EDELL

Defendant

Civil Action No. 2788-59

JUDGMENT

This cause came on to be heard by the Court upon the complaint and answer, and after hearing testimony and taking evidence adduced by the parties and having heard arguments of respective counsel, and the Court having made Findings of Fact and Conclusions of Law, it is by the Court this 19th day of February, 1963,

ADJUDGED, ORDERED AND DECREED as follows:

1. That the plaintiff is entitled to have and recover of and from said defendant the sum of \$16,017.30, together with interest at 6% per annum from February 25, 1959 to date of payment, and have execution for said sum as at law.

2. That defendant shall satisfy all court costs of this proceeding.

/s/ Burnita Shelton Matthews
Judge

[Filed February 19, 1963]

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Findings of Fact

The Court makes the following findings of fact:

1. The plaintiff WILLIAM J. CASEY is a member of the Bar of the State of New York, various United States District Courts and the Tax Court of the United States. He is also enrolled to practice as an attorney before the Internal Revenue Service, and is a recognized authority and text writer on federal taxation and on the so-called Renegotiation Act.

2. The defendant HARRY EDELL solicited and procured Government contracts during the years 1943, 1944 and 1945 for some eight different Government contractors and subcontractors. He was a knowledgeable negotiator, experienced in contract terminology and skilled in the ways of business and in the making of agreements generally.

3. The Court adopts, for the purpose of these Findings of Fact, certain findings of fact which were made by the Tax Court of the United States in Edell v. United States, 28 T.C. 601 (June 10, 1947), as follows:

(a) "... Edell and his brother [Lewis] created a partnership on December 22, 1942" (28 T.C. at 603).

(b) "During the years involved, 1943-1945, and also during 1946, practically all of the work done for the Edell partnership was performed by Harry Edell; Lewis's services were minor, if not negligible." (28 T.C. at 605)

(c) "For the years 1943, 1944 and 1945, the partnership filed Federal partnership returns on a cash basis, in which were reported the amounts received by the partnership from various ones of the companies . . . as follows:

	<u>Gross Receipts</u>
1943	\$ 59,392.54
1944	142,546.08
1945	<u>161,539.91</u>
Total	\$363,478.53" (28 T.C. at 606)

(d) "... The services which Edell offered the companies included obtaining information from Government representatives, preparing bids, and carrying on dealings on their behalf, as their representatives . . ." (28 T.C. at 607)

(e) "Under each agreement which each of the eight companies, the partnership was to be paid, and was in fact paid, commissions varying from 2-1/2 per cent to 5 per cent of the amounts of sales by the companies to the Government under Government contracts and subcontracts . . ." (28 T.C. at 608)

(f) "Edell, acting for petitioner, procured at least one Government contract, or subcontract, for each of the eight companies . . . He carried on a number of activities in soliciting and procuring such contracts, acting as a representative of the companies. He advised his principals to bid on Government contracts. He also negotiated the terms of contracts between his principals and Government agencies . . ." (28 T.C. at 609)

4. In December 1953, the defendant HARRY EDELL met the plaintiff WILLIAM J. CASEY and outlined two problems that he had with the United States Government, consisting of an alleged income tax deficiency and of an excessive war profits claim against Mr. Edell which had been appealed by him to the Tax Court but which had been reduced to judgment in the amount of \$227,449.54 by the United States District Court for the Southern District of New York (United States v. Edell, 15 F.R.D. 382, 383).

5. Subsequently Mr. Casey was informed that the United States was the respondent to a petition which had been filed in the Tax Court in 1949 on behalf of Mr. Edell by the Washington law firm of Pittman & Roberts. This petition sought to have the Tax Court declare that Mr. Edell was not subject to the War Price Adjustments Act (50 U.S.C.A. Appendix § 1191) or, in the alternative, that the determination previously made as to the amount of excessive profits was incorrect. Mr. Casey was informed that the Department of Justice had offered to settle the excessive profits matter by a determination that Mr. Edell had received excessive profits in the aggregate sum of \$183,000 for the years 1943, 1944, and 1945 (\$12,000 for 1943; \$57,000 for 1944; and \$114,000 for 1945) [Plaintiff's Exhibits 2, 27]. Mr. Casey was also informed that the Internal Revenue Service had assessed a deficiency against Mr. Edell for additional taxes due for 1943, 1944, and 1945 in the amount of \$175,944.29.

6. Mr. Casey refused to become sole counsel until prior counsel, Mr. Amann, was satisfied to have him do so, and until Mr. Amann's fee was paid and the papers of Mr. Edell were sent by Mr. Amann to Mr. Casey. Mr. Amann did not send the papers to Mr. Casey until July 27, 1954 [Plaintiff's Exhibit 50] and did not withdraw from the case until July 21, 1954 [see Plaintiff's Exhibit 4].

7. On July 28, 1954, Mr. Edell and Mr. Casey entered into two written fee agreements. One agreement provided for a \$2,500 retainer fee plus 30% of the difference between the proposed tax deficiency and the final settlement, together with such costs as might be awarded in any action concerning tax deficiencies assessed against Mr. Edell for the calendar years 1943, 1944, 1945, 1946, and 1947, but provided that no fee should be based on any tax reduction resulting from any renegotiation refund paid by Mr. Edell to the Government.

The other agreement entered into between the parties on this date provided that Mr. Casey's fee on the renegotiation matter should be 30% of the difference between the Justice Department offer of \$138,000 and the final settlement of the dispute. The figure of \$138,000 in this agreement was an error, and it should have read \$183,000, which was the lowest Justice Department offer.

8. On August 6, 1954, Mr. Casey sent a letter to Mr. Edell indicating that the figure of \$138,000 used in the renegotiation fee agreement of July 28, 1954, was erroneous and should have been \$183,000. This letter also enclosed a corrected fee agreement for the renegotiation case in language identical to the original agreement of July 28, 1954, except changing the figure used as a basis for calculating the fee from \$138,000 to \$183,000. Mr. Edell knowingly and intentionally signed and returned this amended agreement using the \$183,000 figure.

9. In the renegotiation case Mr. Casey was authorized as counsel for Mr. Edell to enter into a stipulation with the Government regarding the defendant's annual expenses for the years in question, and such stipulation was made with the prior knowledge and consent of Mr. Edell. After the trial of the renegotiation case, the United States Tax Court, in an opinion by Judge Herron rendered approximately one year after the case was heard, decided that Mr. Edell had received as excessive profits for the years 1943-1945 the sum of \$150,000 (\$26,000 in 1943; \$54,000 in 1944; and \$70,000 in 1945) as contrasted with the best settlement offer of the Justice Department of \$183,000 for the years

1943-1945 [Plaintiff's Exhibit 2]. As a result of this judgment Mr. Casey became entitled to a fee of \$9,900, which is 30% of \$33,000, or the difference between the ultimate court judgment and the lowest settlement offer of the Justice Department. Mr. Casey agreed to await payment of this fee until the tax matter was also settled.

10. As a result of the Tax Court findings and judgment in the renegotiation case, the amount of the tax deficiency claimed for the relevant years by the Internal Revenue Service, after adjusting for the Tax Court renegotiation judgment, was reduced from an aggregate of \$175,944.29 to an aggregate of \$124,611.42. Mr. Casey made no charge and claimed no fee for this reduction.

11. Mr. Casey by his efforts obtained a reduction in the aggregate tax deficiency of Mr. Edell for the years 1943, 1944 and 1945 from \$124,611.42 to \$97,898.75, or a tax saving of \$26,712.67. Mr. Casey became entitled to his tax fee of 30% of this saving of \$26,712.67, or \$8,013.80. The \$97,898.75 tax settlement was approved by Mr. Edell.

12. At the request and direction of Mr. Edell, Mr. Casey did not handle the tax deficiencies for the years of 1946 and 1947, nor did he ever charge a fee for such years.

13. Mr. Casey incurred expenses amounting to \$603.50 reasonably required in handling Mr. Edell's legal matters, for which he is entitled to reimbursement.

14. Mr. Edward Brady, who was an attorney experienced in this field of law and who was an employee of Mr. Casey, necessarily expended 740 hours in working on Mr. Edell's legal problems under the direction of Mr. Casey. Mr. Brady's time was worth \$20 per hour, and the reasonable value of his services for Mr. Edell on a quantum meruit basis amounts to \$14,800. Mr. Casey necessarily expended 325 hours in working on Mr. Edell's problems. Mr. Casey's time was worth \$60 per hour, and the reasonable value of his services for Mr. Edell on a quantum meruit basis was \$19,500. The total value on quantum meruit of services rendered by Mr. Brady and Mr. Casey for Mr. Edell amounts to \$34,300.

15. The original intent of both Mr. Casey and Mr. Edell was to enter into a renegotiation fee agreement based on the best Justice Department offer of settlement as the basis from which savings were to be calculated, and such best offer was in fact \$183,000 and not \$138,000. The change in the agreement, made only nine days after the original error, was not unfair or unreasonable, nor a result of duress or fear on Mr. Edell's part.

16. The plaintiff performed legal services in accordance with his fee agreements with the defendant, and as of Feb. 25, 1959 there was owing to him the following:

\$9,900.00 for the savings effected on the renegotiation claim; \$8,013.80 for the reduction of the tax deficiencies for the years 1943, 1944, and 1945; and \$603.50 for expenses incurred by plaintiff; or a total of \$18,517.30.

On the above debt of \$18,517.30 the plaintiff is entitled to a credit of \$2,500.00 for the previously paid retainer fee in that amount.

Therefore, the net amount due plaintiff for his services and expenses is the difference between \$18,517.30 and \$2,500.00 or \$16,017.30.

Interest is due at 6 per cent per annum on \$16,017.30 from February 25, 1959 to date of payment. Plaintiff is entitled to judgment upon the foregoing indebtedness of the defendant.

Conclusions of Law

The Court makes the following conclusions of law:

1. There was a binding and valid fee agreement entered into by and between the defendant and the plaintiff on July 28, 1954, by which the plaintiff was to receive 30% of whatever savings he effected in the tax deficiencies assessed by the Government against the defendant for 1943, 1944, 1945, 1946 and 1947, after recomputing said tax deficiencies to reflect the result of any amounts taken out of the income of the defendant by renegotiation of the excessive profits received by him during such years.

2. The plaintiff was either under no obligation under the agreement of July 28, 1954, to handle the defendant's tax problems for the years 1946 and 1947, or the plaintiff was relieved of any such obligation he might have had by the directions and instructions of the defendant. The fact that the plaintiff did not handle the tax problems of the defendant for the years 1946 and 1947 had no legal effect on the fee owed to the plaintiff by the defendant for services performed by the plaintiff in reducing the defendant's tax deficiencies for the years 1943, 1944, and 1945.

3. On July 28, 1954, the plaintiff and the defendant entered into an agreement whereby the plaintiff was to receive 30% of the savings from the best Justice Department settlement offer, which by error was stated in the agreement to be \$138,000. This agreement was bilaterally corrected on August 6, 1954 to reflect the true intent of the parties by inserting the figure \$183,000 instead of the figure \$138,000. This correction was fairly made, it was executed by the defendant with full knowledge of what he was doing, and he was under no undue influence, duress or pressure from the plaintiff so to do.

4. The legal rate of interest both in the District of Columbia and in the State of New York is 6% per annum on obligations where the rate of interest is unspecified.

5. The plaintiff effected savings on the renegotiation claim by the difference between the Justice Department's best settlement offer of \$183,000 and the judgment of the Tax Court for \$150,000, and is entitled to a fee of 30% of such difference, or \$9,900.

6. The plaintiff obtained reductions of the tax deficiencies asserted against the defendant for the years 1943, 1944 and 1945 in the amount of \$26,712.67, which settlement the defendant approved, and the plaintiff is entitled to a fee of 30% of such reductions, or \$8,013.80.

7. The plaintiff incurred expenses on behalf of the defendant in the amount of \$603.50 and is entitled to reimbursement therefor.

8. The defendant is entitled to deduct the previously paid retainer fee of \$2,500 as a credit against the aforesaid \$18,517.30 indebtedness to the plaintiff.

9. On a quantum meruit basis the reasonable value of the services rendered by the plaintiff on behalf of the defendant amounts to \$34,300.

10. There is owing to the plaintiff by the defendant the sum of \$16,017.30 as of February 25, 1959, said sum being the total of the two fees of \$9,900.00 and \$8,013.80 respectively plus the \$603.50 expenses (or \$18,517.30), minus the retainer fee of \$2,500 previously paid by defendant, plus interest at 6% per annum from February 25, 1959 until paid together with the costs of this action, and the plaintiff should have judgment therefor.

/s/ Burnita Shelton Matthews
Judge

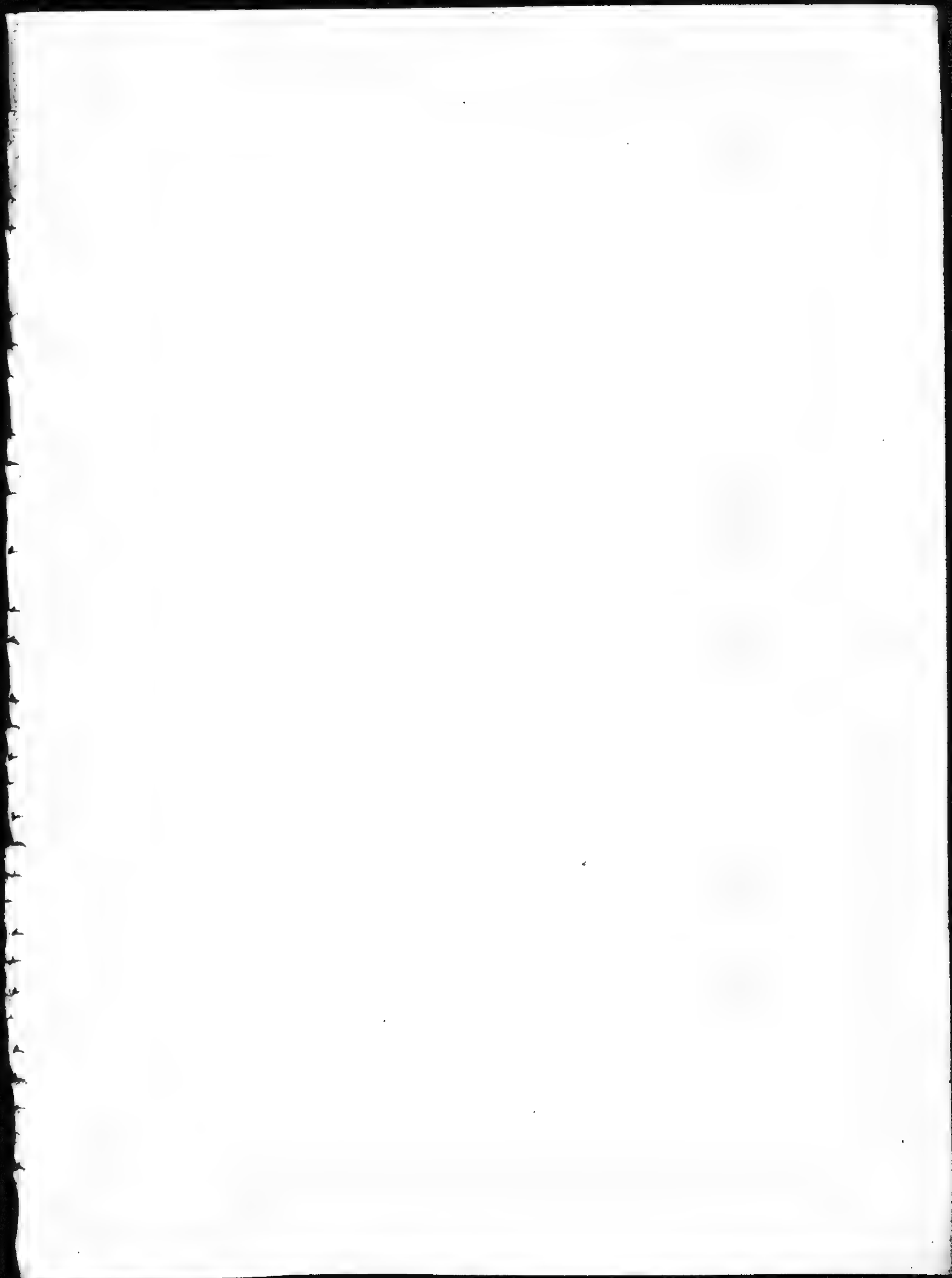
[Filed February 28, 1963]

NOTICE OF APPEAL

Notice is hereby given this 28th day of February 1963 that the defendant Harry Edell hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment entered on the 19th day of February 1963 in favor of William J. Casey, Plaintiff against said Harry Edell, defendant.

HANNAN, CASTIELLO & BERLOW

By: /s/ Ralph F. Berlow
Attorney for Defendant



United States Court of Appeals
District of Columbia Circuit

AUG 1 1963

Alan J. Paulson
CLERK

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

Appellant,

v.

WILLIAM J. CASEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RALPH F. BERLOW

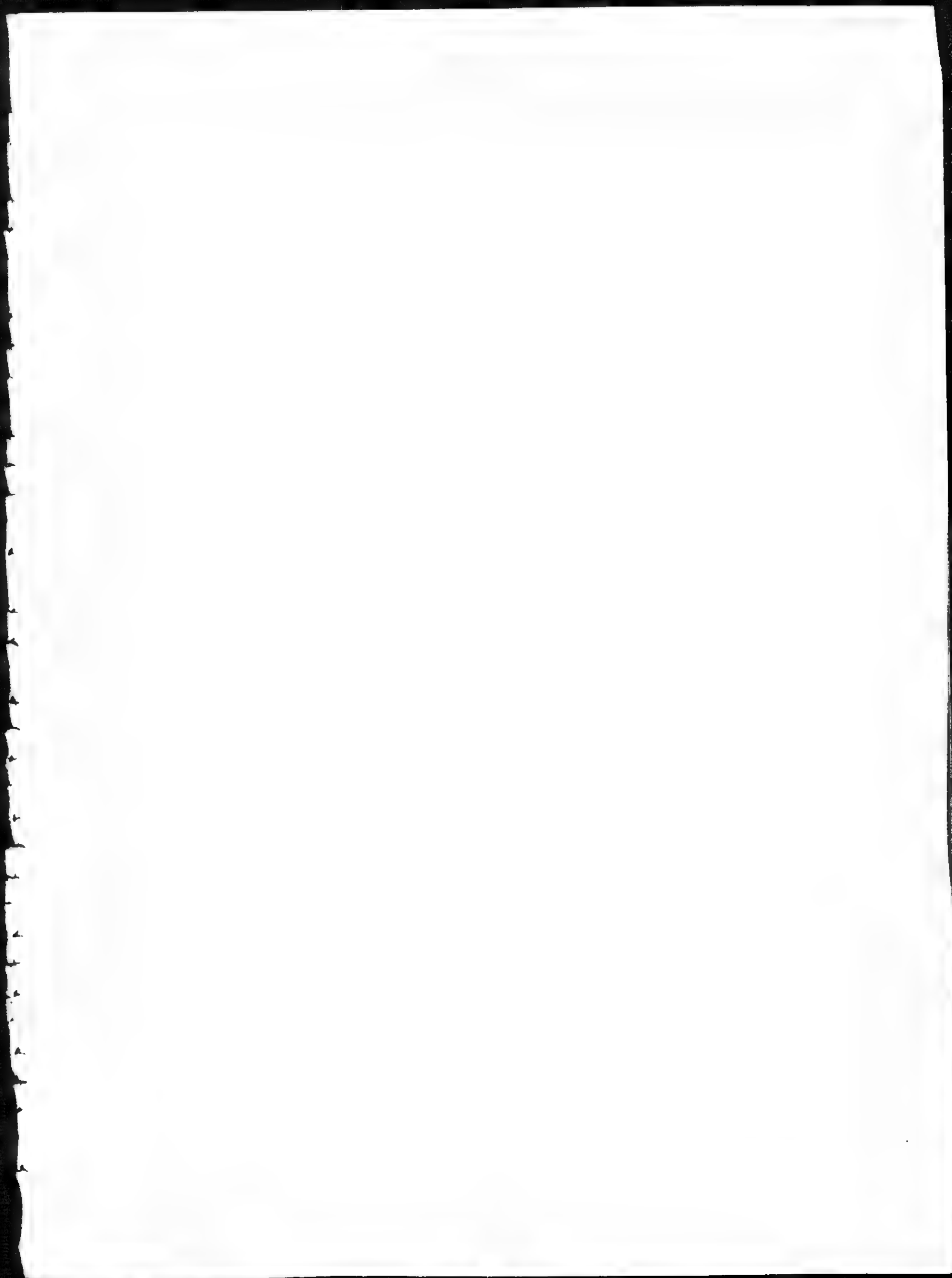
637 Woodward Building
Washington 5, D. C.

Attorney for Appellant

Of Counsel:

HANNAN, CASTIELLO & BERLOW

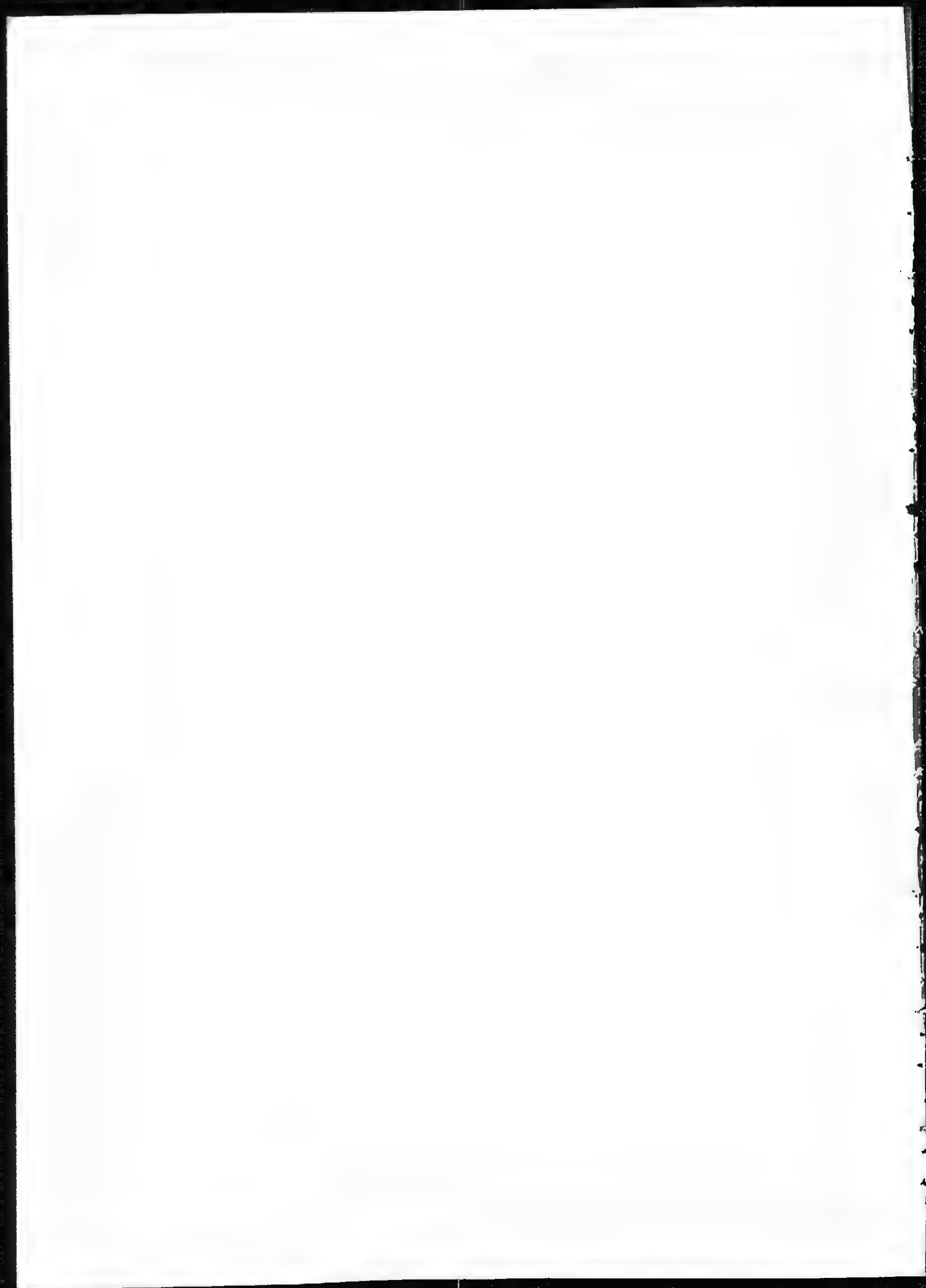
STANLEY M. ESTROW



(i)

QUESTIONS PRESENTED

- I. Were the Findings of Fact of the Court below "clearly erroneous" when it appears from the documentary evidence and undisputed facts that the Plaintiff failed to prove that the Defendant had consented to the terms of the letter agreements upon which the Findings were based?
- II. If an agreement between an attorney and his client as to the attorney's fee is clear in its terms, is it not error for the Court to base its interpretation of the agreement upon oral evidence as to the intention of the parties?



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

Appellant,

v.

WILLIAM J. CASEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This was a suit by an attorney for fees.

The jurisdiction of the District Court is based upon the D. C.
Code, Sections 11-305, 11-306 (1961).

After a trial without a jury, the Court made its Findings of Fact and Conclusions of Law (J.A. 413-418) and entered final Judgment thereon (J.A. 412) from which the Defendant has appealed (J.A. 420).

Jurisdiction is vested in this Court pursuant to 28 U.S.C., Section 1291 (1952).

STATEMENT OF THE CASE

The Defendant during the years 1943, 1944 and 1945 was employed by various defense contractors to prepare bids for them and act as their representative in their dealings with the Government (J.A. 317, 413).

In 1948, the Defendant was advised that the Federal Government claimed that he was indebted to it for excess profits in accordance with the Renegotiation Act of 1942, 50 U.S.C.A., App. Section 1191, and for additional income taxes for the years 1943, 1944 and 1945 (J.A. 415).

The Defendant employed counsel to represent him in his defense of these claims and in 1949 a petition was filed by them in the Tax Court to have it declared that he was not subject to the excess profits tax or, in the alternative, that the amount claimed by the Government as excess profits was not correct (J.A. 415).

Subsequently, the Defendant employed new counsel, Douglas Amman, who received from the Department of Justice an offer to settle the excess profits matter by an agreement that the Defendant had received excess profits in the aggregate sum of \$183,000.00 for the years 1943, 1944 and 1945 (\$12,000.00 in 1943, \$57,000.00 for 1944, and \$114,000.00 for 1945) (J.A. 415). The proposal of the Government to settle the excess profits claim contained a stipulation that the allowable business expenses incurred by the Defendant totaled \$60,000.00 for the three year period (J.A. 388, 389). The Defendant had previously been advised that the Internal Revenue Service had assessed deficiencies

against him for additional income taxes due for 1943, 1944 and 1945 in the total amount of \$175,944.29 (J.A. 405, 406).

Amman calculated the extent to which the income tax deficiencies would be reduced assuming the offer of the Justice Department as to the excess profits was accepted and applied to the claimed income tax deficiencies. He concluded that the tax liability would be reduced from \$175,944.29 to approximately \$41,000.00 and the "renegotiation cost" would be approximately \$138,000.00. Thus the Defendant would, under this settlement proposal as applied both to excess profits and income tax, be required to pay in full settlement, approximately \$179,000.00. These calculations were set forth in two letters to the Defendant from Amman. The letter setting forth the "renegotiation cost" was dated February 1, 1954, and was designated as Plaintiff's Exhibit No. 3 in the Court below (J.A. 356). The letter applying the Government's settlement proposal to the income tax matter was dated March 8, 1954, and designated Plaintiff's Exhibit No. 37 (J.A. 393).

In April of 1954 the Defendant decided to terminate his relationship with Amman and retain counsel who would accept compensation on a contingent fee basis. The Defendant was "fed up" with the practice of his prior attorneys of charging him on an hourly basis (J.A. 92, 217).

Thereafter, he met with the Plaintiff, a New York tax lawyer, and discussed with him the Government's settlement proposal as applied to both of these matters as computed by Amman (J.A. 21, 214). On July 15, 1954, it was agreed in New York between the Plaintiff and Defendant that the Plaintiff would represent the Defendant and that his fee, other than a \$2,500.00 cash retainer, would be 30% of the difference, if any, between the amount to be paid by the Defendant in accordance with the Government's offer as calculated by Amman and the payments ultimately made by the Defendant in final settlement (J.A. 7-9, 217, 218, 259).

At the time this agreement was consummated interest was accruing against the Defendant's tax obligations and substantially all of his assets

were in escrow so that he was unable to use them as working capital (J.A. 20, 219, 220).

On July 27, 1954, the Plaintiff obtained from Amman possession of the documents constituting all of the evidence available to the Defendant which were essential to the defense of these tax claims (J.A. 216, 311, 415), Amman having been paid and his services terminated.

On the next day, July 28, 1954, the Plaintiff drafted and the Defendant executed two separate agreements, one referring to the income tax matter and the second to the renegotiation matter (J.A. 416). The plaintiff stated that this change from the original single agreement (J.A. 106, 112) had to be done in order to comply with certain Rules of Practice of the Internal Revenue Bureau as to contingent fees but that the original agreement of July 15 remained unchanged as between the parties (J.A. 7-10, 42, 218, 221, 243). On August 6, 1954, the Plaintiff demanded that the agreement referring to renegotiation be changed for the third time and the sum previously referred to in the agreement as being \$138,000.00 was changed to read \$183,000.00 (J.A. 10, 11, 416).

These agreements were further supplemented on two subsequent occasions as to certain particulars (J.A. 22, 224). All of these agreements and the supplements were signed by the Defendant when he was not represented by counsel other than the Plaintiff (J.A. 16, 120).

On October 17, 1957, after the trial of the renegotiation matter but before the settlement of the income tax matter, the Plaintiff sent to the Defendant a bill for \$10,903.50 representing 30% of the reduction obtained in the renegotiation trial (J.A. 376, 377). The Defendant refused to pay this, stating that the agreement was that the fee of the Plaintiff was to be based upon the reduction, if any, obtained by him in both the renegotiation and the tax matters and that the fee could not be calculated until the income tax matter was determined (J.A. 232, 243,

270). After this refusal of the Defendant, no bill was sent by the Plaintiff until the determination of the income tax liabilities.

On December 16, 1957, a settlement was reached with the Internal Revenue Bureau requiring payment by the Defendant of approximately \$97,000.00, or \$56,000.00 more than that which he would have had to pay in accordance with the settlement proposal of the Government in the renegotiation matter as applied to the income tax matter by Amman. On February 18, 1959, the Plaintiff sent to the Defendant a final bill claiming \$17,035.76 for services rendered and disbursements (J.A. 234). The Defendant refused to pay this bill contending that the Plaintiff had not obtained any net saving in accordance with the agreement of July 15, 1954, but that the net cost to the Defendant after the Plaintiff's representation was greater than that required in accordance with the settlement proposal obtained by his prior counsel, Amman. The Defendant calculated this as follows:

Final payment of income tax	\$ 97,898.80
Less Government's Proposal	41,064.83
Additional Taxes Paid	<u>56,833.97</u>
Less Savings in renegotiation	33,000.00
Loss to Plaintiff	<u>(\$ 23,833.97)</u>

(J.A. 412, 283, 284).

Prior to the introduction of the evidence as set forth above, the Defendant objected and contended that the contract sued upon was not ambiguous and on its face did not require any additional payment (J.A. 34, 38). The Court overruled the objection and heard all of the evidence (J.A. 35), and at the conclusion of the trial made Findings of Fact and Conclusions of Law upon which a Judgment for the Plaintiff in the amount of \$16,617.30 was entered (J.A. 412, 418).

The Court found that the Plaintiff had effected a savings on the renegotiation claim of the difference between the Government's best offer of \$183,000.00 and the Tax Court Judgment of \$150,000.00 and

was thus entitled to 30% of this difference or \$9,900.00. The Court further found that the Plaintiff had obtained a reduction in the gross tax deficiencies in the amount of \$26,712.67 and was entitled to 30% of this or \$8,013.80. * The Court, in brief, did not calculate the fee in the income tax matter by applying the terms of the settlement offer of the Government to the deficiencies but used the gross deficiency asserted, making no allowance for the business expenses which had been allowed in the Government's settlement offer. The Court accepted the Plaintiff's theory of the meaning of the agreements even though the Plaintiff himself admitted that they were ambiguous and unclear (J.A. 16, 120) and that under his theory there was "no risk involved" that the Plaintiff would not receive a substantial fee (J.A. 309).

The reduction obtained by the Plaintiff in the income tax matter resulted solely from the application to the gross deficiencies of the expenses stipulated in the Tax Court in the trial of the renegotiation matter (J.A. 106, 178). These expenses were agreed upon between counsel in the Tax Court as being \$42,000.00 or \$18,000.00 less than that contained in the Government's settlement offer (J.A. 105).

After the entry of the Judgment, the Defendant filed his Notice of Appeal (J.A. 420).

* From the total of \$9,900.00 and \$8,013.80 or \$17,913.30, the Court deducted the \$2,500.00 retainer and added \$603.50 for disbursements, thus arriving at a Judgment of \$16,017.30. No argument is made herein as to the propriety of the allowance for disbursements or the allowance of interest at 6% from February 25, 1959.

STATUTES AND RULES INVOLVED

FEDERAL RULES OF CIVIL PROCEDURE

Rule 52Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. . . .

50 U.S.C.A. App. Section 1191

(e) " . . . upon such filing such Court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or sub-contractor, and such determination shall not be reviewed or redetermined by any court or agency"

STATEMENT OF POINTS

1. If the written fee agreements between the attorney and his client were so ambiguous as to make it necessary to take oral evidence to ascertain their meaning, then the Plaintiff attorney failed to prove his theory especially in view of the rule that agreements between attorneys and their clients are to be construed against the attorney drafting them.
2. The letter agreement of July 28, 1954, between the parties provided "that the deficiency proposed . . . will be reduced by any amount repaid . . . as a result of renegotiation."

Since the proposed deficiency was \$175,944.29, the amount paid to the Government as a result of renegotiation was \$115,180.53, reducing the proposed deficiency to \$60,763.76 and the final settlement was \$97,898.80, in accordance with the plain language of the contingent fee agreement, there was nothing owing to the Plaintiff since there was a cash loss of \$37,135.04 to the Defendant after the Plaintiff's representation.

SUMMARY OF ARGUMENT

1. The Defendant contended that the entire agreement between him and the Plaintiff, attorney, was contingent upon the attorney obtaining for him a financially more advantageous settlement of both of the Government's claims than the proposal which had already been obtained by his previous attorney, Amman. The Defendant contended that this was the agreement between the parties and that it was destroyed and the two ambiguous written agreements substituted for it, with the understanding, however, that the original agreement remained in effect, the new agreements being drawn only to conform with certain rules of the Bureau's Director of Practice.

The Court in its Findings of Fact considered the two written agreements separately, and found that the fee as to the income tax matter was to be based upon the gross tax deficiencies without any consideration being given to the proposed settlement offer made by the Government. This decision of the Court was "clearly erroneous" particularly in view of the burden upon the Plaintiff to prove his case by a preponderance of the evidence and the rule of construction which requires the Court to resolve ambiguities in a fee agreement between an attorney and his client strictly against the attorney and in favor of the client.

2. The written fee agreement between the Plaintiff attorney and his client, the Defendant as to the income tax, provided in its pertinent parts "you may retain . . . as compensation, 30% of the difference between the proposed deficiency and the final settlement . . . It is agreed

that ... the deficiency proposed ... will be reduced by any amount repaid to the ... Government as a result of renegotiation ...". In accordance with the following calculations and the plain language of the agreement the Defendant was not indebted to the Plaintiff for any services rendered in the income tax matter.

Proposed deficiency	\$ 175,944.29
Amount repaid as a result of renegotiation	<u>115,180.53</u>
Net Difference	60,763.76
Amount paid in final settlement	97,899.80
Cash loss to Defendant	(\$ 37,135.04)

ARGUMENT

I

The Plaintiff Failed to Establish by a Preponderance of the Evidence That the Two Letters Sued Upon Constituted the Agreement Between the Parties and Therefore the Judgment for the Plaintiff Based Upon the Letters Must be Reversed.

At the trial below the Plaintiff testified as his own first witness. Upon his testifying as to conversations with the Defendant concerning the execution of the two letter agreements of July 28, 1954, and August 6, 1954, the Defendant objected stating "parol evidence or oral testimony as to what the contract means, or its interpretation" is inadmissible (J.A. 34). The Court overruled the Defendant's objection and heard evidence from both parties as to the conversations, circumstances and correspondence surrounding the execution of these written agreements and their subsequent modification and amplification.

The Defendant testified unequivocally that there was a single written agreement of July 15, 1954, which preceded the written agreements sued upon (J.A. 218). At his pretrial deposition the Plaintiff testified that he had "looked through his files" for a copy of the original written agreement but was "unable to find it" and thought, therefore, that it had been "destroyed" (J.A. 8). At the trial the Plaintiff did not

deny the existence of a prior agreement but testified as to there being a "written" agreement "there may have been and there may not have been I do not recall that there was" (J.A. 103). The Defendant testified that the single agreement of July 15, 1954, was later embodied in two agreements so as to conform, according to the Plaintiff's assertion, with the Rules of Practice of the Office of the Director of the Internal Revenue Bureau. In his pretrial deposition the Plaintiff testified that the original single agreement "clouded-up the Judgment of the Committee on Practice as to whether an adequate retainer had been received on a tax matter and I thought it best to separate it" (J.A. 8). At the trial he, in effect, repeated this testimony (J.A. 108, 109), although he admitted that his first communication with the Committee was two and one half months later. (J.A. 44)

The Defendant testified that prior to July 15, 1954, he gave to the Plaintiff two letters from his former attorney, Amman, which set forth the precise financial effect which the settlement proposal of the Justice Department would have upon his income tax and excess profits liabilities, namely that this proposal would cost the Defendant \$178,000.00.

The Plaintiff admitted that he had met with Amman; had discussed the first letter (J.A. 304) with him and had used it as the basis for his agreement with the Defendant as to the fee for the renegotiation aspect of the case. Incredibly, however, he denied seeing or receiving the second letter (J.A. 305) although in the first letter Amman stated that he would prepare and deliver the second letter within a few weeks. Plaintiff did admit that upon termination of Amman's employment all of the papers in Amman's possession were delivered to him, and he, the Plaintiff, in turn delivered a receipt for them to Amman (J.A. 131).

The Plaintiff denied that this second letter from Amman to the Defendant was the basis for the contingent fee agreement although it did set forth the Defendant's income tax liability under the Government's settlement proposal. The letter stated that the Defendant's liability would be \$10,280.65 for 1943, \$14,823.86 for 1944 and \$15,960.32 for 1945 or a total of \$41,064.83 (J.A. 393).

The contingent fee agreement as applied to the renegotiation matter did take into consideration the allowance of certain proper business expenses. The Plaintiff contended that the contingent fee agreement as to the income tax matter contemplated no allowance for business expenses but was predicated solely upon the gross deficiencies. This contention assumed that the Defendant had earned hundreds of thousands of dollars with no expenditures for secretaries, rent or the like. This assumption was obviously contrary to the facts.

The Defendant's contention was simplicity itself. The Defendant asserted that the settlement proposal of the Government as applied to both aspects of the tax case was the basis for his original agreement with the Plaintiff of July 15, 1954, and that he had executed the two agreements of July 28 and August 6, 1954, solely to accommodate his attorney, the Plaintiff, in his desire to comply with the Rules of Practice but that this accommodation was subject to the definite understanding that the single agreement of July 15, 1954, based upon his net dollar liability was still in effect as between the parties. (J.A. 43)

The agreement between the lawyer, Plaintiff, and the client, Defendant, was entered into in the State of New York and, as indicated by the Court Below (J.A. 23), should be construed in accordance with its law which, in this regard, is not at variance with the law of the District of Columbia. Spilker v. Hankin, 88 U.S. App. D.C. 206, 188 F.2d 35.

In In Re Howell, 215 N.Y. 466, 109 N.E. 572, 574, the New York Court stated

"In this state it has been held that as to contracts made between attorney and client, subsequent to the employment which are beneficial to the attorney, it is incumbent upon the latter to show that the provisions are fair and reasonable and were fully known and understood by the client."

The Plaintiff obviously failed to make the requisite showing. The provisions of the agreement which he sued upon are patently unfair and unreasonable. As the Plaintiff testified there was "no risk involved"

that he would not receive an additional fee from the Defendant under the income tax agreement. There was never any question but that a substantial allowance would be made for business expenses properly incurred by the Defendant. Consequently the gross deficiencies would be reduced to that extent, and the Plaintiff, therefore, under his theory, would be entitled to 30% of these reductions. If this was the agreement, it was not a "contingent" one, as was contemplated by the parties. There was, under the Plaintiff's theory, only a contingency as to the amount of the fee to be paid. Under his view, it was certain that a substantial additional fee would have to be paid.

The Justice Department offer originated in reference to the renegotiation matter and set forth certain admitted expenses. If this offer had been accepted in the Tax Court in accordance with the Renegotiation Act of 1942, 50 U.S.C.A. App. Section 1191 (e), it could not be "reviewed or redetermined by any court or agency". The Internal Revenue Bureau accepted the Tax Court stipulation in the renegotiation matter as binding upon it as to the issue of the Defendant's proper business expenses for income tax purposes. In the words of the Plaintiff "the stipulation ... was accepted to the penny". (J.A. 154).

The Defendant's testimony as to the events and circumstances leading up to the various agreements was substantially uncontradicted.

It was agreed that the Plaintiff had drafted supplements and amplified these agreements on approximately five occasions. The agreement as claimed by the Defendant was fair and reasonable. He testified, in effect, that he told the Plaintiff "Under the settlement proposal my present lawyer has obtained from the Government, I must pay a total of \$179,000.00 to settle all of my tax liabilities, both those arising from excess profits and ordinary income tax. If you improve upon the offer which my present attorney has obtained by reducing these payments, I will pay to you, as your fee, 30% of the reduction you obtain. If you obtain no reduction, you will retain only the \$2,500.00

which I have already paid to you." The Plaintiff contended that this arrangement referred only to the renegotiation matter. As to the income tax matter he successfully argued below that he was entitled to an additional fee, although he did not improve the Plaintiff's position but obtained a result which required payment of more than that demanded by the settlement proposal which had been offered to the Defendant before the Plaintiff was retained. The effect of the Judgment of the Court below is to require the Defendant to pay to the Plaintiff a fee of more than \$15,000.00 when it is conceded that the Plaintiff's employment was secured with the specific understanding that he was to be paid only if he improved upon the offer of settlement which the Defendant had already received from the Government. The Plaintiff not only failed to improve upon this settlement offer but his representation resulted in the Defendant being required to pay \$23,833.97 more than he was obligated to pay under the settlement offer (J.A. 412). To put it more simply, before the Plaintiff was retained, the Defendant could have paid \$179,000.00 to the Government in full settlement. Under the interpretation of the Court below of the fee agreement, the Plaintiff paid to the Government an additional \$23,833.97 in taxes and is moreover required to pay an additional \$16,017.30 to his attorney.

The agreements sued upon by the Plaintiff were agreements between an attorney and client which were entered into after the commencement of the attorney-client relationship. The agreements were dated July 28, 1954 and August 6, 1954. The Plaintiff had done some work for the Defendant as early as March, April and May of 1954 (J.A. 24). However, on July 27, 1954, the Plaintiff obtained, for the first time, physical possession of all of the Defendant's documents. In view of the crucial importance of the documentary evidence to the Defendant's case, this date and its juxtaposition with the date of the first fee agreement are enormously significant. Immediately after the Plaintiff obtained possession of the documents, he suggested that the agreement of July 15, 1954, be altered. At this point the Defendant had

no alternative but to accede to this request. The Plaintiff, therefore, was not only required to prove his case by a preponderance of the evidence, as every civil case must be proven, but in addition,

"In fact, there is a presumption of unfairness or invalidity attaching to a contract for compensation executed by an attorney and his client after the establishment of the fiduciary relation and the burden of showing that a contract for compensation, executed by an attorney and his client during the existence of the fiduciary relation is fair and reasonable, and free from undue influence rests on the attorney."

3 N.Y. Jurisprudence, Section 94, Page 497. In re Howell, supra; Spilker v. Hankin, supra; Samuels v. Simpson, 144 AD 466, 129 N.Y.S. 534.

Mackey v. Passaic Stone Company, 266 AD 690, 292 NY 525 was an action in which an attorney sued on the basis of a contingent retainer to recover the sum of approximately \$5000. He knew at the time that the defendant in such suit had a counterclaim of approximately \$3800. His contract of retainer called for 35% of "any monies recovered". At the trial he obtained a judgment for the sum of \$5000. and the counterclaim was allowed for \$3800. The attorney sought to recover 35% of the \$5000 but the Court held that his percentage was limited to the difference between the 2 figures since his retainer agreement had to be construed most strictly in favor of the client whose interpretation was that the retainer agreement applied to the amount of cash recovered. The Court of Appeals, the highest Court in the State of New York, affirmed this decision.

Furthermore, although the case was tried by the Court without a jury, as stated in Perry v. Perry, 88 U.S. App. D.C. 337, 338, 190 F.2d 601

"We are not confronted here with a decision based upon a weighing of the candor and credibility of the witnesses. Where the evidence is partly oral and

the balance is written or deals with undisputed facts, then we ignore the trial judge's finding and substitute our own ... if the trial judge's finding must rest exclusively on the written evidence or the undisputed facts, so that his evaluation of credibility has no significance."

J. D. Hedin Const. Co. Inc. v. F. S. Bowen Elec. 106 U.S. App. D.C. 386, 273 F.2d 511; Orvis v. Higgins, 180 F.2d 537 (C.A.2d 1950); Dollar v. Land, 87 U.S. App. D.C. 214, 184 F.2d 245 (1950).

Thus, in this case the findings are "clearly erroneous" within the meaning of Rule 52 (a) of the Federal Rules of Civil Procedure, and the Judgment of the Court in favor of the Plaintiff should be reversed and Judgment entered for the Defendant.

II

In Accordance With its Plain Language the Fee Agreement as to the Income Tax Matter Did Not Require Any Additional Payment to the Plaintiff.

If this Court does not accept the Defendant's argument that the Plaintiff failed to sustain its burden of proof as to the entire fee agreement, nevertheless it should reverse so much of the Judgment as is based upon the letter agreement of July 28, 1954 (J.A. 3). This letter provides in its pertinent parts "you may retain as and for your compensation 30% of the difference between the proposed deficiencies and the final settlement. ... in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount repaid by me ... as a result of renegotiation and that you will not receive 30% of the tax reduction resulting from any such renegotiation refund."

There was no question that the "proposed deficiencies" were \$175,944.29, the "final settlement" was \$97,898.80, and the "amount repaid by me (the Defendant) to the United States Government as a result of renegotiation" was \$115,180.53 (J.A. 282). Defendant's Exhibit No. 16 (J.A. 411) demonstrates that the application of these sums to the language of the contract resulted in a cash loss to the Defendant of

\$37,135.04. Thus, there was nothing to be retained by the Plaintiff for his compensation, as there was no difference between the proposed deficiencies and the final settlement after the "deficiencies proposed" were reduced by the amount repaid by the Defendant to the United States Government as a result of renegotiation.

The Plaintiff contended that this interpretation of the agreement, although in accordance with the literal language, did not represent the intention of the parties, and that the intention of the parties was that after the determination of the amount of income which was excessive profits, the deficiencies were to be recomputed to give the Defendant the benefit of the deficiency assessed on that income which had to be repaid to the Government because it was excess profits. This theory is set forth in Plaintiff's Exhibit No. 18A (J.A. 375), and was the theory upon which the Court based its Findings and Judgment (J.A. 418). The Court found that after the deduction of the \$2,500.00 retainer the Plaintiff was entitled to a Judgment of \$16,017.30. Of this, \$8,013.80 is based upon the Courts interpretation of the July 28, 1954, fee agreement. If the agreement is interpreted in accordance with its terms the fee payable to the Plaintiff would be reduced by \$8,013.80 and the judgment entered against the Plaintiff would not exceed \$8,003.50.

Insofar as the July 28 agreement was concerned, the Court accepted the Plaintiff's contention that the language of the agreement did not represent the intention of the parties and that it should be varied so as to bring about an interpretation which would coincide with the Plaintiff's view of what their intention was.

This is not in accord with the law applicable to the interpretation of contracts. As stated in Kenny Construction Co. v. Allen, 101 U.S. App. D.C. 334, 248 F.2d 656:

"...we do not reach intention as a means of interpretation unless the words are unclear or both parties assert a positive intent contrary to the words and nobody else is adversely affected by the strange meaning."

Here the words are not unclear as to what were the "proposed deficiencies", "final settlement" or "amount repaid" ... "as a result of renegotiation." This being so, there was no necessity to delve into any explanation of what the parties meant. The plain language of the agreement should have been applied without any speculation as to its meaning. As stated in Columbia Hospital v. U.S. Fidelity & Guaranty Co. 88 U.S. App. D.C. 251, 256, 188 F.2d 656:

"But, where the language is clear, in the absence of misrepresentation, the Courts are not free to rewrite a commercial contract entered into at arms length by fully competent parties."

In Nichols v. Nichols, 360 N.Y. 490, 496, 119 N.E. 2d 351, the Court stated that

"The first and best rule of construction of every contract, and the only rule we need here, is that, when the terms of a written contract are clear and unambiguous, the intent of the parties must be found therein."

If these rules of construction are applicable generally to commercial contracts, they are, a fortiori, applicable to a contract between an attorney and client drawn by the attorney and executed by a client who was, at the time of execution, represented by no counsel other than the attorney who drew the agreement.

As stated in Spilker v. Hankin, supra,

"fee contracts between attorney and client are a subject of special interest and concern to the courts ... they are always subject to the close scrutiny of the court whenever judicial enforcement is sought."

Or as stated in 3 N.Y. Jurisprudence Section 94, page 497;

"An attorney ought to have his agreements with his clients so plain as not to require construction. An ambiguous agreement between attorney and client must be construed most strictly against the attorney even though the client signed the agreement after having received independent advice. It is a general

rule with respect to an agreement of retainer, that when it is capable of more than one construction it is to be construed most favorably, most strictly in favor of the client."

Thus, this agreement should not be liberally construed in favor of the attorney so as to reach a result which would require the payment by the client of a substantial fee. In the absence of any ambiguity, it should be construed in accordance with its plain language so that the client is to pay no fee insofar as this contingent aspect of the employment agreement is concerned.

Thus, the Court erred in its Findings of Fact in that they were based upon an improper construction of the contract and this case should be reversed, at least in part, with a direction that the Judgment entered against the Defendant be reduced by \$8,013.80 and a Judgment entered for the Plaintiff for not more than \$8,003.50.

CONCLUSION

The Findings of Fact of the Court were "clearly erroneous" in that, upon consideration of the documentary evidence and the undisputed facts, the fee agreement which was the basis for the Court's Findings, was not proven by a preponderance of the evidence to be the agreement between the parties, particularly in view of the rule of law which requires careful scrutiny by the Court as to the fairness of agreements between attorneys and clients.

If this Court should find that the letter agreements sued upon were in fact the agreements between the parties, then the agreement of July 28, 1954, in reference to the income tax matter, by its terms, precludes the payment of any additional fee to the attorney. It was error to consider oral evidence as to the meaning of this unambiguous agreement.

Thus the Judgment should either be reversed in whole if the Court adopts the first argument of the Defendant, or in part if the second argument is applicable.

On the grounds set forth above the Defendant requests reversal.

Respectfully submitted,

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BRIEF OF APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

Appellant,

v.

WILLIAM J. CASEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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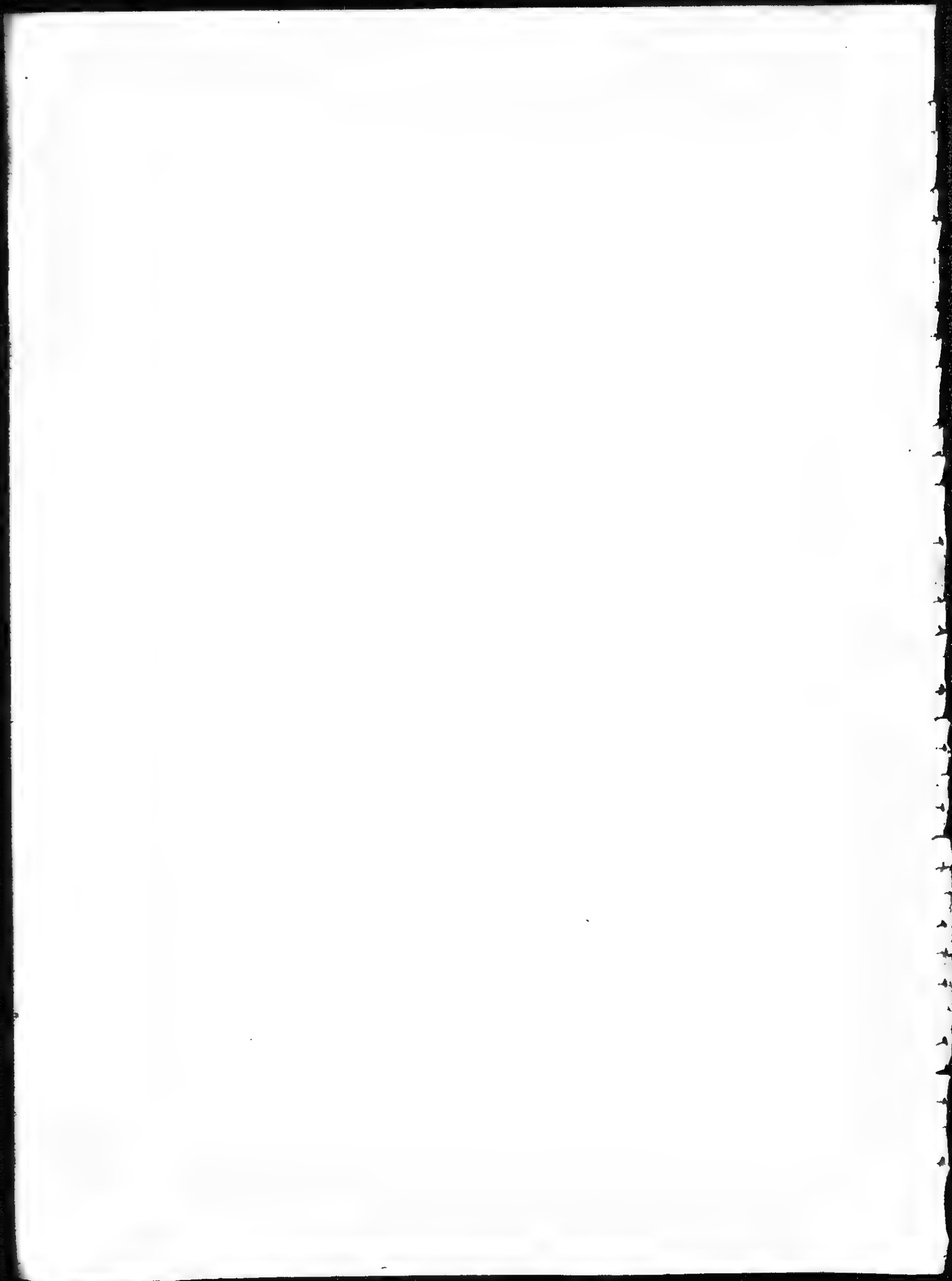
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United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 16 1963

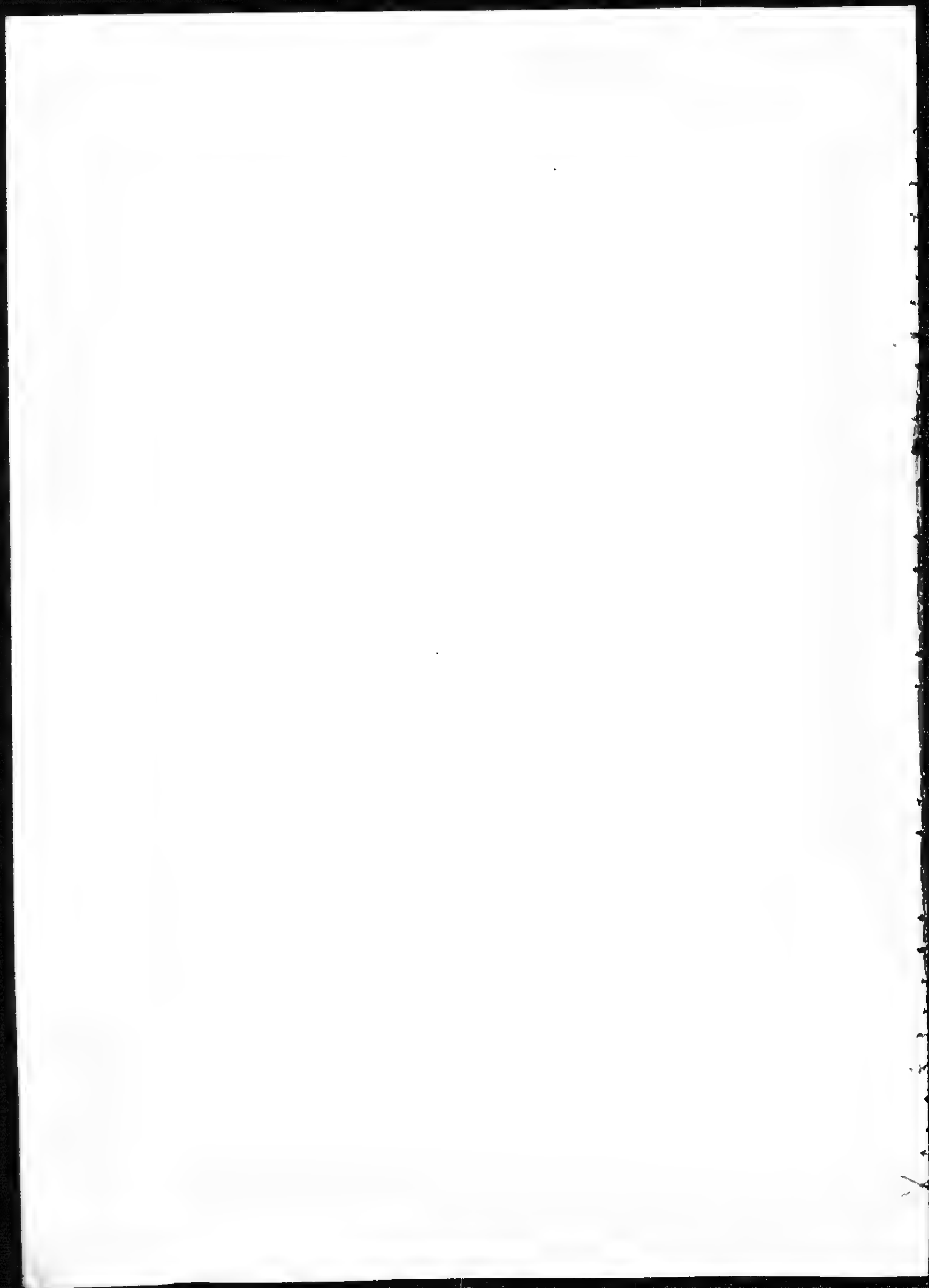
Nathan J. Paulson
CLERK



(i)

QUESTIONS PRESENTED

- I. Were the Findings of Fact of the court below "clearly erroneous" where the defendant admitted the execution of the letter agreements sued upon and a preponderance of the evidence showed that such agreements were consented to and binding upon the parties?
- II. Should the Findings of Fact of the court below be set aside where based upon the trial judge's observation of the witnesses and determination of their credibility?
- III. Was the court below clearly erroneous in holding that the contingent fee arrangements in question were fair and reasonable and were knowingly entered into by the parties?
- IV. If the trial court was in error in holding the written fee agreements valid and binding, are not the court's quantum meruit Findings the basis for a judgment in the amount of said Findings?



(iii)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

Appellant,

v.

WILLIAM J. CASEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLEE

COUNTERSTATEMENT OF THE CASE

Prior to July 28, 1954, the date that plaintiff¹ entered into an attorney-client relationship with the defendant, the defendant had been informed by the United States Government that it was making substantial claims against him for (1) excess profits under the Renegotiation

¹ Plaintiff below is appellee here, and defendant below is appellant here. For ease of reference, they will be referred to herein as "plaintiff" and "defendant."

Act of 1942, and (2) income tax deficiencies for the years 1943, 1944, and 1945. During these war years the defendant had represented various defense contractors in procuring contracts for them with the Government as well as rendering services to them which allegedly had some bearing upon the war effort. It was the contention of the Government that the defendant was a "five-percenter" and that \$300,000 of income which he had derived from such defense contractors was renegotiable as excess profits [J.A. 19-21, 414]. The Government had made a determination on June 9, 1949, that the defendant had realized excessive profits of \$281,653 [J.A. 316]. This was reduced to judgment in the United States District Court for the Southern District of New York, after making an allowance for tax credits [J.A. 415]. In 1949 a petition had been filed by other counsel of the defendant (Pittman & Roberts, of Washington, D. C.) in the United States Tax Court, wherein the defendant sought a determination that he was not subject to the excess profits tax or that the amount claimed by the Government was excessive [J.A. 20, 415].

On December 16, 1953, the Department of Justice, through one of its attorneys, Mr. J. H. Prentice, made a written settlement proposal concerning the excess profits claim to the defendant's then counsel, Pittman & Roberts [J.A. 26-28, 49-50, 354, 388-389]. This settlement proposal set forth that the defendant had received excess profits which were renegotiable in the total amount of \$183,000. The expenses of the defendant during the years in question (1943, 1944, and 1945) were specifically stated in the Government's settlement proposal to be "estimated," and the portion of such estimated expenses allocated to the renegotiable excess profits of \$183,000 amounted to \$53,400 (\$14,400 - 1943; \$18,300 - 1944; \$20,700 - 1945) [J.A. 388, 389]. This settlement proposal was made as a total package by the Government, and it was not possible for the defendant to obtain an allowance for the estimated expenses contained therein unless he also agreed to the full amount of excess profits which totaled \$183,000 [J.A. 49-51, 123, 147, 149].

In addition to the excess profits claimed, the Internal Revenue Service had assessed income tax deficiencies against the defendant for the three years in question, which deficiencies amounted to a total of \$175,944.29 [J.A. 47, 63, 405-406]. In the computation of such income tax deficiencies no allowance had been made to the defendant for expenses, it being the position of the Government that the defendant had failed to substantiate his claims for expenses by proper documentation or evidence. In addition to such deficiency, agents of the Internal Revenue Service also considered and threatened the imposition of fraud penalties [J.A. 62, 81, 97, 145-146, 177-178, 180, 181, 184].

The plaintiff's immediate predecessor, Mr. Douglas Amann, had made certain calculations showing the net cost of the renegotiable settlement proposed by Mr. Prentice [J.A. 356-363]. These computations showed that the excess profits under the proposed settlement would be \$183,000 and that by deducting tax credits and adding interest the total renegotiation cost would be \$137,526.60. The tax credits were derived by subtracting from the defendant's reported income for the years in question the amounts he would be required to rebate to the Government for excess profits, and recomputing tax liability. However, Mr. Amann's letter of February 1, 1954, which set up his computations of the net cost of the renegotiation settlement, specifically stated: "I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week." [J.A. 356] The plaintiff and his associate, Mr. Brady, both testified that they never saw or were aware of any computations regarding tax deficiency [J.A. 127, 179, 183, 300, 305, 312], although the defendant produced at trial a letter from Mr. Amann to himself dated March 8, 1954 [J.A. 178-9; 183], which purported to make further computations based upon the assumption that the Internal Revenue Service would be willing to allow the same expenses as were proposed by the Department of Justice as estimates of expenses in the settlement offer of December 16, 1954 [J.A. 393, 394].

The plaintiff first met with the defendant and discussed his two problems of excess profits and income tax deficiency in December, 1953 [J.A. 20]. Thereafter, in early March, 1954, the parties met in New York and the defendant indicated his desire to employ plaintiff as counsel to handle his two problems inasmuch as considerable time had elapsed and legal fees had been incurred by him without a resolution of his difficulties [J.A. 23]. There was further conversation in May, 1954, among the parties and Mr. Amann in Washington, D. C.; and finally in July, 1954, the defendant and plaintiff discussed the latter's employment as an attorney upon a contingent fee arrangement [J.A. 29]. Although defendant testified that there was a written agreement for a 30 per cent contingent fee on July 15, 1954, the plaintiff did not believe that a written agreement was made at that time inasmuch as he did not remember the parties executing such an agreement and had never been able to find a copy thereof [J.A. 73-75, 101-103, 305]. No copy of such purported letter was ever put into evidence. In any event, both plaintiff and defendant testified that the plaintiff had stated that he would not undertake to act as the defendant's attorney until his predecessor, Mr. Douglas Amann, had agreed to such substitution of counsel and had been paid his pending fees [J.A. 36, 268, 306]. Mr. Amann agreed to withdraw as counsel by his letter to defendant dated July 21, 1954, and upon the payment of his pending fees delivered all of the extensive files and documents in his possession to the plaintiff on July 27, 1954 [J.A. 37, 306-307, 363-367].

On July 28, 1954, the parties executed two separate agreements for the retention of plaintiff as counsel and his contingent fees for services to be rendered [J.A. 38-41, 367-368]. The tax fee agreement provided for a \$2,500 retainer fee plus 30 per cent of the difference between the proposed tax deficiency and the final tax settlement, together with such costs as might be awarded in any action concerning tax deficiencies assessed against defendant for the calendar years 1943-1947, but provided that the contingent fee should not be based on any tax reduction

resulting from any renegotiation refund paid by the defendant to the Government [J.A. 368].

The other agreement entered into on July 28, 1954, provided that the plaintiff's fee on the renegotiation matter should be 30 per cent of the difference between the Justice Department offer of \$138,000 and the final settlement of the dispute [J.A. 367]. The figure of \$138,000 in this agreement was an error, and it should have read \$183,000 which was the lowest Justice Department offer [Plaintiff's Exhibit No. 2, J.A. 354-355; Plaintiff's Exhibit No. 27, J.A. 388-389]. On August 6, 1954, the plaintiff sent a letter to the defendant stating that the figure of \$138,000 used in the renegotiation fee agreement of July 28, 1954, was erroneous and should have been \$183,000. This letter also enclosed a corrected fee agreement for the renegotiation case in language identical to the original agreement of July 28, 1954, except for changing the figure used as a basis for calculating the fee from \$138,000 to \$183,000. The defendant knowingly and intentionally signed and returned the corrected agreement using the \$183,000 figure [J.A. 39, 40, 153, 310, 369-370].

The plaintiff tried the renegotiation case in the United States Tax Court, and on June 10, 1957, an opinion and judgment was handed down by the Tax Court finding that the defendant owed the Government \$150,000 as excess profits for the three years in question [J.A. 316-352]. On October 7, 1957, the plaintiff sent the defendant a bill for fees representing 30 per cent of the reduction obtained in excess profits from \$183,000, the best settlement offer of the Justice Department, to \$150,000, the amount of the judgment. The amount of this fee was 30 per cent of \$33,000 or \$9,900 [J.A. 68, 375, 377-382]. Defendant asked plaintiff to await payment of this fee until the tax matter was also settled, but he did not make any contention that the amount of the fee might be reduced depending upon the results of the income tax negotiations [J.A. 62]. Plaintiff agreed to await payment of the renegotiation fee until the tax matter was also settled.

As a result of the Tax Court findings and judgment in the renegotiation case, the amount of the tax deficiency claimed for the years in question by the Internal Revenue Service, after adjusting the excess profits to be repaid by the defendant, was reduced from \$175,944.29 to \$124,611.42. Plaintiff made no charge and claimed no fee for this reduction, in accordance with his agreement [J.A. 65].

Subsequently the plaintiff by his efforts obtained a reduction in the aggregate income tax deficiency of defendant for the relevant years from \$124,611.42 to \$97,898.75, or a tax saving of \$26,712.67. Plaintiff became entitled to his tax fee of 30 per cent of this saving of \$26,712.67, or \$8,013.80 [J.A. 66, 139]. The tax settlement was approved by the defendant. At the request and direction of defendant, the plaintiff did not handle the tax deficiencies for the years 1946 and 1947, nor did he charge a fee for such years [J.A. 46-47, 84-85, 141-142, 171].

The fees claimed by the plaintiff for handling the renegotiation case are calculated as follows [J.A. 374]:

FINAL SETTLEMENT OFFER BY U. S. DEPARTMENT OF JUSTICE	\$ 183,000.00
JUDGMENT OF U. S. TAX COURT AFTER TRIAL	<u>150,000.00</u>
REDUCTION OBTAINED BY OFFICE OF ATTORNEY CASEY	\$ 33,000.00
PER CENT OF REDUCTION DUE ATTORNEY UNDER FEE AGREEMENT OF AUGUST 6, 1954	<u>30%</u>
DOLLAR AMOUNT OWED ATTORNEY BY DEFENDANT UNDER FEE AGREEMENT OF AUGUST 6, 1954	\$ 9,900.00

The fees claimed by the plaintiff for handling the income tax deficiency are calculated as follows [J.A. 375]:

	<u>Amount Claimed by Government</u>		<u>Amount Determined</u>		<u>Savings Effected</u>
1943	\$ 16,406.52	—	\$ 14,040.37	=	\$ 2,366.15
1944	32,907.71	—	21,265.84	=	11,641.87
1945	<u>75,297.19</u>	—	<u>62,592.54</u>	=	<u>12,704.65</u>
Totals	\$ 124,611.42	—	\$ 97,898.75	=	\$ 26,712.67

SAVINGS OBTAINED BY OFFICE OF ATTORNEY CASEY	\$ 26,712.67
PER CENT OF SAVINGS DUE ATTORNEY UNDER FEE AGREEMENT OF JULY 28, 1954	<u> x 30% </u>
DOLLAR AMOUNT OWED ATTORNEY BY DEFENDANT	\$ 8,013.80

Mr. Edward Brady, an attorney who was an employee of plaintiff, expended 740 hours in working on the defendant's legal problems under the direction of the plaintiff. Mr. Brady's time was reasonably worth \$20 per hour, and the reasonable value of his services for defendant on a quantum meruit basis amounts to \$14,800. In addition, the plaintiff expended 325 hours of professional work on the defendant's problems, and his time was worth \$60 per hour. The reasonable value of plaintiff's services on a quantum meruit basis was \$19,500. The total value on quantum meruit of services thus rendered to the defendant amounts to \$34,300 as found by the trial judge in the Findings of Fact based upon the relevant testimony [J.A. 87-92, 167-169, 417].

SUMMARY OF ARGUMENT

I

1. Under two written contingent fee contracts, the plaintiff was entitled to a percentage of the savings effected for the defendant on an excess profits claim between the lowest Government offer and the lesser amount established by the Tax Court. In the income tax deficiency agreement, plaintiff was entitled to the difference between the amount claimed by the Government after giving tax credit for the repayment by defendant of excess profits, determined in the renegotiation case, and the amount of the ultimate settlement.

2. In computing the plaintiff's contingent fee, the savings were to be calculated upon improvements made over the lowest Government offer in the excess profits matter, and upon the lowest claimed income tax deficiency resulting from recomputation of income by the Government after the repayment of excess profits by defendant and they were not to be based upon computations made by Mr. Douglas Amann, former counsel for defendant.

3. The credibility of the witnesses was for the trial judge who observed their demeanor and appearance on the witness stand, particularly concerning conflicts in testimony over an alleged original contract different from the agreements sued on, or the use of Mr. Amann's computations rather than the Government's claims or offers.

4. Estimated expenses set forth in the Government's proposed settlement offer of the excess profits matter were not available to the defendant after such offer was rejected by him, and in any event such estimated expenses were not binding upon the Internal Revenue Service in computing the defendant's income tax deficiencies.

5. The contingent fee contracts in question were entered into at the inception of the attorney-client relationship, and not subsequent thereto.

6. In any event, the contingent fee contracts in question were fair and reasonable to the defendant and were understandingly consented to and executed by him.

7. The quantum meruit value of the plaintiff's services established the reasonableness of the contingent fee agreements, and if the Court should find any defect in either agreement the plaintiff would be entitled to a judgment for the reasonable value of his services as found by the trial judge.

II

1. The contingent fee agreement pertaining to the defendant's income tax deficiency is not ambiguous unless a complete final clause therein, joined to the earlier portion of such agreement by the conjunctive word "and", is completely ignored, which is contrary to the applicable rules for the construction of contracts.

2. In construing such contract the Court may consider the explanations and construction thereof made by the parties and acted upon by them in their regular conduct of business.

ARGUMENT

I.

THE PLAINTIFF ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT HE WAS ENTITLED TO COLLECT LEGAL FEES EARNED IN ACCORDANCE WITH TWO WRITTEN CONTINGENT FEE AGREEMENTS OR, IN ANY EVENT, IS ENTITLED TO JUDGMENT ON QUANTUM MERUIT FINDINGS OF THE TRIAL COURT.

The evidence established that the plaintiff as an attorney entered into two written contingent fee agreements with the defendant on July 28, 1954. One agreement provided that in a pending suit in the United States Tax Court involving a claim of the Government for excess profits subject to renegotiation under the Renegotiation Act of 1942, the plaintiff should receive as fees 30 per cent of the difference between a renegotiation settlement offer of \$183,000 and whatever lesser amounts he was able to establish as the amount of defendant's excess profits. The other agreement of July 28, 1954, pertained to an income tax deficiency asserted by the Government against the defendant, and provided that the plaintiff should receive a \$2,500 retainer fee plus 30 per cent of the difference between the proposed income tax deficiency and the final income tax settlement. This agreement also provided that the contingent fee should not be based on any tax reduction resulting from any

renegotiation refund paid by the defendant to the Government in the excess profits matter.

In the fee agreement for the excess profits case, a typographical error was made wherein it was stated that the lowest Justice Department settlement offer was \$138,000, whereas in fact the lowest such offer was \$183,000. Solely as a result of this transposition of figures, the plaintiff on August 6, 1954, only nine days after the execution of the fee agreement for the excess profits case, wrote a letter admittedly received by the defendant which explained the error in the figures and enclosed a corrected fee agreement in language identical to the original agreement of July 28, 1954, except for the change of \$138,000 to \$183,000. This correction of the July 28, 1954, contract in the renegotiation matter was signed without question by the defendant and returned to the plaintiff, and constitutes the basis of this aspect of the instant suit.

Appellant (defendant below) in his brief has argued that there was an original single written agreement pertaining to attorney's fees in both the excess profits and the income tax deficiency matters, which he seeks by parol evidence to establish as the agreement of the parties, with terms greatly different from the two written agreements of July 28, 1954. In the first place, it appears unlikely that there ever was a written agreement executed by the parties on July 15, 1954. Although the defendant testified that there was such an agreement, he claims that it was destroyed on July 28, 1954. The plaintiff does not recall any such written agreement and was never able to find a copy in his files although he had searched them to ascertain the facts. The plaintiff did testify that there were oral discussions between himself and the defendant concerning a proposed contingent fee arrangement to cover the two pending problems of the defendant, which discussions were on the same terms and conditions as the July 28, 1954, agreements, one of which was corrected solely on the error in transposition of figures on

August 6, 1954. The plaintiff's recollection on this point is corroborated by the fact that both he and the defendant testified that the plaintiff refused to assume the representation of the defendant on these two matters unless and until predecessor counsel, Mr. Douglas Amann, consented to the change of attorneys. This consent was not obtained until Mr. Amann wrote his letter of July 21, 1954, to the defendant [J.A. 363-366], wherein he stated:

"The tone of your letter convinces me that you have no intention of treating fairly with your attorneys . . . Under the circumstances we feel that it would be useless for us to continue to represent you. Will you please, therefore, send us your check in payment of the accumulated fees of \$1,855.00, as reviewed in our letter to you of May 14, 1954, upon receipt of which we will be pleased to turn over to you the papers in this case." [J.A. 366]

Following receipt of this letter, the defendant paid the balance owing on Mr. Amann's fees, and the latter then delivered his files to the plaintiff on July 27, 1954. Inasmuch as the withdrawal of Mr. Amann was testified by both plaintiff and defendant to be a stated condition precedent to the plaintiff's representation of the defendant, this time sequence confirms the plaintiff's testimony that the first effective written fee agreements were made and executed on the following day, July 28, 1954. It would also appear strange that if a written agreement had actually been executed on July 15, 1954, as the defendant contended, he would not have retained a copy thereof. The record amply demonstrates that the defendant was very clever and experienced in his dealings with his various attorneys and in retaining all documentary evidence of his dealings with them.

In any event, the plaintiff testified unequivocally that at no time did he make a contingent fee agreement with the defendant different from the terms set forth in the written agreements of July 28, 1954. The defendant attempted to controvert this testimony by contending that the contingent fee was to be based upon the difference between the final

outcome of both the excess profits and the income tax deficiency problems considered as one, and that the plaintiff's contingent fee was further based upon certain computations which had been previously made by Mr. Amann. The plaintiff testified forthrightly that both the written agreements and preceding discussions based his contingent fee solely upon the savings he could effect from the lowest Justice Department offer of \$183,000 in the excess profits case, and the reduction he could obtain from the assessed income tax deficiencies. Here was a clear conflict in the testimony of the two primary witnesses, and this conflict was resolved in favor of the plaintiff by the trial judge who had the opportunity to observe the appearance and demeanor of both witnesses and to determine which was more credible. Such determination of credibility is clearly intended to be within the province of the trial judge, in accordance with Rule 52 of the Federal Rules of Civil Procedure, which provides in pertinent part as follows:

" . . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. . . ."

The defendant testified that prior to entering into a fee agreement with the plaintiff, he gave the latter a letter from Mr. Amann dated March 8, 1954 [Plaintiff's Exhibit No. 37, J.A. 393]. That letter made certain computations concerning the defendant's income tax deficiency, which were stated to be approximate and assumed that the Internal Revenue agent would be willing to allow the same expenses which were allowed by the Department of Justice in its settlement offer in the re-negotiation matter. Mr. Amann expressly stated that there was no guarantee that the Internal Revenue Department would accept such items, but he used such expense items in making his computation because he had no other basis on which to calculate even an approximate tax liability. Both the plaintiff and his assistant, Mr. Edward Brady, who handled some of the legal work performed on behalf of the defendant,

testified directly and explicitly that they had never seen Mr. Amann's letter of March 8, 1954, nor had its contents ever been disclosed to them by anyone. The defendant of course attempted to assert the contrary in an effort to buttress his testimony that the contingent fee agreement was based upon Mr. Amann's computations rather than existing offers or claims by the Government.

Here again there was a direct conflict in the sworn testimony between the defendant on one hand and the plaintiff and Mr. Brady on the other. This conflict also could only be resolved by determining the credibility of the respective witnesses, and such determination was likewise made by the trial judge in accordance with the principles of Rule 52 of the Federal Rules of Civil Procedure.

Appellant next contends that inasmuch as the deficiency income tax assessment made no allowance for business expenses, there was no risk involved as to plaintiff earning a fee and that the agreement was therefore not a contingent one. This argument first overlooks the plaintiff's direct testimony that he informed the defendant that no business expenses were allowed in the assessed tax deficiency [J.A. 309]. In addition, appellant takes out of context the plaintiff's statement that there was "no risk involved" and infers that it was therefore certain that plaintiff was to be paid an additional fee. In fact, plaintiff's testimony on this point is as follows:

"Q. And it had nothing to do with the fact in the event you were unsuccessful?

"A. Nothing. I couldn't be unsuccessful. Nothing at all, because the demand — my income tax agreement was based on the Government's demand, and that demand had already been reduced. I couldn't do any worse than that. There was no possibility of being unsuccessful in the income tax matter.

"Q. Do you mean when you stipulated to the expenses in the Tax Court that that was res judicata and that —

"A. No. —

"Q. At that time you sent the bill in the renegotiation matter, had the deficiencies been reduced?

"A. No, the tax calculations had not been made at that time. But you misunderstood my previous answer.

"Q. I don't understand it.

"A. I said there was no possibility of my holding anything on the income tax matter because my agreement was based on the deficiency which the Government had asserted. That was fixed and I can only improve on it.

"Q. You couldn't lose on this?

"A. I was working to improve it. My conversation was based on the degree to which I was able to improve it. I couldn't lose on it.

"Q. There was no risk involved at all that you would worsen the client's position?

"A. No, there was no risk involved."

Considered in its entirety, it is quite apparent that the plaintiff was testifying that there was no risk involved that he would worsen the client's position in the income tax deficiency matter; he was not testifying that there was no risk involved concerning his fee, since if there was no improvement in the client's position, plaintiff would receive no further fee despite the hours of effort plaintiff might expend in the client's behalf. It therefore does not follow that such agreement was "patently unfair and unreasonable" as contended by the appellant as a result of this distortion of the testimony.

The appellant attempts to treat the business expenses set forth in the Government's settlement proposal in the excess profits case as being binding upon the Internal Revenue Service in its subsequent negotiations on the income tax deficiency. However, this position of the appellant is neither accurate nor valid. The expenses were referred to in the settlement proposal itself as "estimated." Both the appellee and his associate, Mr. Edward Brady, testified explicitly that such expenses, totaling \$50,000, as applied to the portion of income subject

to renegotiation, could only be obtained as part of a package settlement. The package settlement proposed by the Government would have resulted in the appellant owing \$183,000 as excess profits. When the settlement offer was rejected in accordance with the appellant's decision and instructions, the entire offer was no longer effective or available, and the Government was in no way bound by such expense estimates [J.A. 51]. In fact, it was then necessary for the appellee to try the excess profits case in the Tax Court and to make proof by a preponderance of the evidence of all expenses claimed. The testimony showed overwhelmingly that the appellant's books and records were so inadequate and deficient that he would have been unable to establish more than \$6,000 annual business expenses even by the uncertain process of piecing together various hotel bills and dates of trips allegedly taken by the appellant [J.A. 54, 79]. In view of the uncertainty of the proof in this regard, the appellee succeeded in effecting a stipulation with the Justice Department in the excess profits trial, whereby it was stipulated that \$14,000 per year, or a total of \$42,000 for the three years in question, constituted the business expenses [J.A. 54-55]. Appellee's skill in securing such a stipulation and in proving to the Tax Court that appellant's excess profits were \$150,000 instead of the Justice Department's best offer of \$183,000 resulted in substantial benefit to his client and entitled him to the agreed contingent fee.

The appellee and Mr. Brady also testified directly that the Internal Revenue Service was not bound by either the estimated expenses in the Justice Department offer or by the \$42,000 stipulation (\$14,000 per year for each of the three years involved) concerning the expenses made in the Tax Court trial of the excess profits matter [J.A. 123, 184]. It was incumbent upon the appellant to make adequate proof of expenses he claimed the right to deduct, and it was only after extensive negotiations with the Internal Revenue Service that the appellee was able to persuade it to allow expenses of \$14,000 per year in the income tax deficiency matter [J.A. 180-184]. In view of the appellant's inadequacy

of records regarding expenses, such tax savings were attributable to the efforts of the appellee, and he was entitled to his contingent fee upon the reduction thus obtained in the income tax deficiency.

The appellant next attempts to argue that the contingent fee agreements were made after the attorney-client relationship had been established and implies that there was some unfairness or overreaching when the parties signed the agreements in question. He also argues that at this point the appellant had no alternative than to accede to the appellee's request, presumably to execute the agreements thus thrust upon him for the first time. In fact, of course, this argument is wholly specious and constitutes an attempt to bring the appellant within the doctrine of Spilker v. Hankin (App. D.C., 1951), 88 U.S. App. D.C. 206, 188 F.2d 35. See also Hankin v. Spilker (1951), 81 A.2d 86. As the plaintiff's testimony clearly shows, he and the defendant had agreed upon the percentage of fees based upon an improvement of the client's existing position relative to the Government's claims or best settlement offers existing at the time in each of the two matters for which he was to be retained. These discussions took place at the plaintiff's home in Long Island prior to the agreements in question and prior to his agreeing to act as attorney on the two matters in issue. Such discussions also contemplated the necessity of securing the withdrawal of predecessor counsel, Mr. Douglas Amann. Appellant refers in his brief to some work which appellee had done for him in March, April, and May of 1954. In fact, such legal work pertained to peripheral matters arising out of the fact that the defendant had deposited certain securities to prevent levy on the judgment already obtained by the Government for excess profits. The plaintiff secured the release of the Government's lien in regard to certain land owned by the defendant. Subsequently, plaintiff secured a release of another attorney's lien asserted in connection with services allegedly rendered by said attorney in assisting in the release of the Government's lien. This constituted a separate

transaction for which he received a separate fee of \$500 [J.A. 94], and nowise established an attorney-client relationship regarding the two problems of the defendant in issue here. The first time that such attorney-client relationship came into being was July 28, 1954, when the two contingent fee contracts were executed, following the fulfillment of the condition precedent of Mr. Amann's withdrawal as counsel and the turning over of the files to the plaintiff on July 27, 1954. On July 28, 1954, the percentages and terms of the fee agreement were set forth in writing, and the correction in the base amount of \$183,000 only was made on the excess profits agreement on August 6, 1954, just nine days later. It thus appears from the evidence in the record that the two instant fee contracts were agreed to and executed simultaneously with the commencement of the attorney-client relationship. The lapse of nine days to correct a typographical error could in nowise put the client at any disadvantage, and had the defendant not agreed with the plaintiff's explanation of the existence of a typographical error as outlined in the plaintiff's letter to him on August 6, 1954, he obviously could have refused to execute such agreement or to have plaintiff expend substantial time and efforts in his behalf.

Contrary to the contention made in the appellant's brief, he was under no compulsion to accede to the letter of correction of August 6, 1954, and had every alternative of discontinuing the relationship as well as his obligation to pay fees by terminating the relationship then and there. This contention obviously is an afterthought concocted many years after the event in an effort to avoid the payment of the very contingent fees under agreements that the defendant himself desired. It is noteworthy that the defendant requested the plaintiff to perform extensive legal services on a contingent fee basis, having already paid out over \$15,000 in attorney's fees to prior counsel without having obtained the desired results therefor [J.A. 34]. It is certainly unfair for the defendant now to contend that after many hours of work by the plaintiff he should receive no reimbursement, even though the plaintiff achieved

savings to the defendant which compensated counsel had been unable to obtain, i.e. \$33,000 reduction in excess profits claim [J.A. 374] and \$26,712.67 reduction in assessed income tax deficiencies, after giving credit to the tax paid on excess profits as established in the renegotiation case [J.A. 395].

It should also be noted that in Spilker v. Hankin, supra, cited by the defendant, the court held that even if a specific fee contract could not be enforced by an attorney, the latter was still entitled to prove the reasonable value of his services on a quantum meruit basis. In the instant case the undisputed evidence and the findings of the trial court are that on a quantum meruit basis the plaintiff expended on the defendant's behalf 325 hours at \$60 per hour, totaling \$19,500, and his associate and employee, Mr. Brady, spent 740 hours at \$20 per hour, totaling \$14,800. The total value of such services is \$34,300 [J.A. 417, paragraph 14 of Findings of Fact], which is greatly in excess of the judgment entered below upon the contingent fee contracts.

If the trial court was in error in its holding that the fee contracts between the appellant and appellee were valid and binding as interpreted by the trial court, then appellee contends that under the doctrine of Spilker v. Hankin and Hankin v. Spilker, supra, appellee is entitled to judgment on a quantum meruit basis of \$34,300 plus interest.

The appellant cited Spilker v. Hankin, supra, for the proposition that where contracts concerning fees are made between attorney and client subsequent to the employment of the attorney, it is incumbent upon the latter to show that the provisions are fair and reasonable and are fully known and understood by the client. It is true that this case does show that fee contracts are the subject of special interest to the courts. However, in the Spilker case the court applies this principle where, as noted at page 39:

"A contract beneficial to the attorney is executed long after the attorney-client relationship has commenced, when the position of trust is well established, and the litigation involved is reaching its culmination."

The instant case is clearly distinguishable from Spilker because the fee contracts were executed contemporaneously with the commencement of the attorney-client relationship, no position of trust was well established, and the litigation involved was far from reaching its culmination — which, indeed, did not occur until the rendition of the Tax Court decision three years later on June 10, 1957.

The preponderance of the evidence established that the percentage of contingent fees and the basis upon which they were to be calculated were agreed to by the parties prior to and at the inception of the attorney-client relationship. Under these circumstances, the correct principle is set forth at 7 Am.Jur.2d p. 69, Attorneys at Law, § 210, as follows:

"Prior to the establishment of an attorney-client relationship, the parties may deal with each other at arm's length, and the attorney may then contract with reference to compensation for his services."

In addition, the many hours of legal services rendered by the plaintiff and Mr. Brady totaled 1,065 hours and were shown to be of the reasonable value of \$34,300 [J.A. 417]. The terms and conditions were fully known to the defendant as shown by the plaintiff's testimony of his explanations to him and his letter of August 6, 1954, explaining fully and in detail the basis for the just-contracted fee agreement [J.A. 369, 370]. It is interesting to note that when Spilker v. Hankin was remanded to the Municipal Court of Appeals [Hankin v. Spilker (Mun.App.D.C., 1951), 81 A.2d 86], the latter court remanded the case for a new trial so that the attorney could put on evidence that his fee arrangements were fair and reasonable and so that the jury could award such sum as it found

was reasonable if an award was not made to the attorney on the promissory notes which had been executed by the client. In short, the attorney could recover on a quantum meruit basis for the reasonable value of services rendered even apart from a written fee contract or promissory notes executed to cover legal fees. In the instant case, by judgment of the trial court, the defendant is actually being required to pay far less than the reasonable value of the services rendered by the plaintiff under his contingent fee contracts.

The defendant seeks to avoid the "clearly erroneous" rule set forth by Rule 52 of the Federal Rules of Civil Procedure by citing J. D. Hedin Const. Co. Inc. v. F. S. Brown Elec. (1960), 106 U.S. App. D.C. 386, 273 F.2d 511, and similar cases. However, it should be noted that in J. D. Hedin the appellate court stated that it could substitute its own views for the trial judge's findings only "if the trial judge's finding must rest exclusively on the written evidence or the undisputed facts, so that his evaluation of credibility has no significance." In J. D. Hedin, the trial court was reversed because the reviewing court found that it had acted upon a prejudicial error of law in the assessment of damages. In Dollar v. Land (App. D.C., 1950), 87 U.S. App. D.C. 214, 184 F.2d 245, the reviewing court expressly found that the findings of the trial judge rested entirely upon documentary evidence or undisputed facts. Clearly these authorities are distinguishable on the facts from the case at bar. The credibility of the plaintiff over the defendant was decisive upon the issue of whether the written contract sued upon constituted the agreement of the parties as the plaintiff testified, or whether there was another or different earlier agreement of July 15, 1954, as the defendant testified. Under such circumstances the determination of the credibility of this irreconcilable testimony was decisive and was within the function of the trial judge in determining the candor or credibility of the witnesses by direct observation of their demeanor and manner of testifying. Similarly decisive was sharply conflicting testimony as to

whether or not the contingent fee contracts were based upon computations made by Mr. Douglas Amann concerning the effect of the settlement proposal of the Government, and especially whether certain income tax deficiency computations made by Mr. Amann were ever seen by or known to the plaintiff.

II.

THE FEE AGREEMENT AS TO THE INCOME TAX DEFICIENCY ENTITLED THE PLAINTIFF TO RECOVER A PERCENTAGE OF THE DIFFERENCE BETWEEN THE TAX DEFICIENCY ASSERTED AFTER RECOMPUTING INCOME REBATED AS EXCESS PROFITS, AND THE ULTIMATE TAX SETTLEMENT.

The defendant attempts in his Brief to contrive an ambiguity in the language of the tax deficiency agreement, by deliberately ignoring the last portion of the relevant sentence. The agreement provided in pertinent part as follows:

" . . . I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement . . . It is understood and agreed that, in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation and that you will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund." [Emphasis supplied.]

In construing this agreement, the reduction of the claimed tax deficiency by the amount repaid by the defendant as a result of renegotiation, must be read with the immediately following language which further describes it after using the conjunctive "and": "that you will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund." The only way in which it was possible for the defendant to obtain a tax reduction resulting from a renegotiation refund was the method followed by everyone who recomputed taxes in

terms of renegotiation — Mr. Douglas Amann in his original renegotiation computation, the Government in computing the amount of its judgment after giving tax credits to the excess profits finding, and the plaintiff in discussions and correspondence with the defendant prior to and at the commencement of his representation of the defendant. This method obviously was to take the amount of excess profits which the defendant was required to repay to the Government, to deduct this sum from the income which the defendant originally reported as earned and upon which he paid income taxes, and to recompute his income tax liability upon the lesser sum earned. This is the clear meaning of the underscored portion of the contingent fee agreement set forth above, and there can be a pretended ambiguity or confusion only if these words are eliminated from the contract. Obviously the court in construing a written contract should consider the entire language of the instrument and should not delete substantial sections such as would be required under the defendant's theory of construction.

Plaintiff claims that the language of the contingent fee agreement on the tax deficiency is plain on its face. However, defendant also had the benefit of plaintiff's letter of August 6, 1954 [J.A. 369] which thoroughly explained the computation of the tax fee agreement and the fact that plaintiff would not be entitled to receive any fee on that portion of reduction in the tax agreement resulting from defendant's repayment to the Government of profits determined to be excessive in the renegotiation case. After spelling out the fee on the renegotiation case, the August 6, 1954 letter, as far as the contingency fee on the tax deficiency states:

" . . . Plus 30% of the difference between tax deficiencies assessed for 1943, 1944, 1945, and 1946, and the amount finally paid in settlement of these deficiencies, except that the contingency fee will not apply to reduction in the tax assessments effected as a result of amounts taken out of income by renegotiation." [Emphasis supplied.]

In the face of this crystal clear explanation, defendant signed the corrected renegotiation fee agreement and never raised any question about the meaning of the two fee agreements until this litigation. Obviously his defense is a sham and an afterthought.

In construing the use of terms in written contracts, the New York rule is set forth in Edward B. Marks Music Corporation v. Foullon (C.A. 2, 1949), 171 F.2d 905 at p. 908 as follows:

" . . . The 'License' employed the word 'use' several times, to describe the licensee's rights, but it always left its meaning of the word undefined. What then was this 'use' on which the whole bargain hinged? Since the 'License' had left it at large, the law of New York — to which we must look to learn the meaning of the contract — admits previous negotiations to show that meaning; . . ."

A similar rule prevails in the District of Columbia. In Green v. Obergfell (App. D.C., 1941), 121 F.2d 46, the court stated in a footnote at p. 59:

"39 Old Colony Trust Co. v. Omaha, 230 U.S. 100, 118, 33 S. Ct. 967, 972, 57 L.Ed. 1410: 'Generally speaking, the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence.' Pitcairn v. American Refrigerator Transit Co., 8 Cir. 101 F.2d 929, 937, certiorari denied, 308 U.S. 566, 60 S. Ct. 78, 84 L. Ed. 475: 'Generally speaking, the cardinal rule of interpretation is to ascertain, if possible, from the instrument itself the intention of the parties, and to give effect to that intention. Where there is obscurity or ambiguity, however, the language used should be read in the light of all the surrounding facts and circumstances, including the acts of the parties indicating what interpretation was placed upon it by the parties themselves. Contemporaneous exposition of the contract is entitled to great, if not controlling, influence in ascertaining the intention of the parties.' Harten v. Loffler, 29 App. D.C. 490, 503, affirmed, 212 U.S. 397, 404, 29 S. Ct. 351, 53 L. Ed. 568."

This rule of construction was also set forth in Fox v. Johnson & Wimsatt (App. D.C., 1942), 127 F.2d 729, at p. 735 in the following language:

"12 Parol evidence may be received not only to explain terms of doubtful import, but to aid the integration in order to establish a particular document or to apply it to its proper subject matter. *Bradley v. Washington, etc., Packet Co.*, 1839, 13 Pet. 89, 99, 10 L.Ed. 72; *Harten v. Loffler*, 1907, 29 App. D.C. 490, affirmed, 1909, 212 U.S. 397, 29 S. Ct. 351, 53 L. Ed. 568; *Sampliner v. Maryland Casualty Co.*, 6 Cir., 1933, 63 F.2d 332. Where the intent of the parties is not clear as to the object of the language used in the integration, it will be construed in the light of the circumstances surrounding the parties when the integration took place and in the light of the practical interpretation given to the controverted portions by their conduct. *Sand Filtration Corp. v. Cowardin*, 1909, 213 U.S. 360, 29 S. Ct. 509, 53 L. Ed. 833; *Bradley v. Washington, etc., Packet Co.*, supra; *Harten v. Loffler*, supra; *Beneke v. Moss*, 4 Cir., 1931, 46 F.2d 948; *Cory v. Hamilton Nat. Bank*, 6 Cir., 1929, 31 F.2d 379, 382; cf. *Bertelsen & Petersen Engineering Co. v. United States*, 1 Cir., 1932, 60 F.2d 745."

In giving effect to the contract in question, all that is required is to determine the original deficiency claimed by the Government (\$175,944.29), the deficiency recomputed by the Government after eliminating excess profits required to be repaid (\$124,611.42), and the final settlement (\$97,898.75). The net saving thus effected by the plaintiff's efforts amounts to \$26,712.67. The effort of the defendant in his Brief to subtract the entire amount repaid to the Government as a result of the renegotiation decision and interest on unpaid taxes wholly distorts the agreement, and is an effort to mix apples and oranges. The tax reduction resulting from the renegotiation refund was from \$175,944.29 to \$124,611.42 as set forth above, and not of the entire amount repaid by the defendant under the renegotiation decision. Appellee claimed as fee on the tax case only 30% of the savings effected

from the \$124,611.42 figure. To construe the contract as appellant now claims it should be construed would in effect make the plaintiff, an experienced attorney, act as an insurer that the defendant would not be required to repay excess profits collected by him from wartime contractors. The substantial nature of the Government's claim and proof in this regard, as illustrated at length in the opinion of the United States Tax Court, would make a contract such as contended by the defendant so unrealistic that no lawyer in his right mind would accept it or expend over one thousand hours of time under such an agreement.

CONCLUSION

The Findings of Fact and the judgment of the trial court were not clearly erroneous, and in fact were supported by the preponderance of the evidence. The plaintiff is entitled to attorney's fees in accordance with the contingent fee agreements executed by the parties, and in any event would be entitled to the reasonable value of his services as found by the trial court.

Accordingly, the judgment for the plaintiff should be affirmed.

Respectfully submitted,

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18

REPLY BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

Appellant

v.

WILLIAM J. CASEY,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 7 1963

Nathan J. Paulson
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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REPLY BRIEF FOR APPELLANT

ARGUMENT

I

THE DEFENDANT'S "COUNTER STATEMENT
OF THE CASE" IS INACCURATE AND UNFAIR.

Upon cross-examination the Plaintiff testified unequivocally that he was not entitled to compensation for services rendered in connection with "fraud penalties" and failed completely to produce any written or oral evidence in corroboration of his own hearsay testimony that these penalties had ever been contemplated by the Government. The Court

below ultimately conceded, as did the Plaintiff, that this question of "fraud penalties" was not a relevant factor in the case (J.A. 101).

There is no evidence in this case that the Defendant was a "five percenter" nor any evidence as to what is a "five percenter".

These suggestions of "fraud" and "five percenter" contained in the Defendants "Counter Statement of the Case" are injected in an unfair and unwarranted attempt to smear the Defendant. Perhaps this technique had some effect on the Findings of the Court below. It should not, however, deter this Court from holding that the Conclusions of that Court are erroneous and contrary to the undisputed oral and documentary evidence.

II

THIS CASE IS NOT CONCERNED WITH
QUESTIONS OF CREDIBILITY BUT ONLY
WITH THE INTERPRETATION OF A WRIT-
TEN CONTRACT.

In his brief the Plaintiff emphasizes his denial of ever seeing or reading Amman's letter of March 8, 1954 (Plaintiff's Exhibit 37, J.A. 393) and contends that this letter was not the basis for the agreement between the parties and that this denial raises a question of fact to be determined by the Court. This letter was offered in evidence by the Plaintiff who thus vouched for its authenticity.

The Plaintiff does not deny, however, that the letter was in fact written to the Defendant and received and read by him prior to his initial discussions with the Plaintiff and that it stated that the settlement proposal of the Government in the renegotiation matter was applicable to his income tax liabilities and that when this was done the Government's claim would be substantially reduced. The Plaintiff admits that he had an agreement with the Defendant which preceded the two written letter agreements and that the Government's offer of settlement was the basis for the agreement in the renegotiation matter and that the first agreement was changed in order to satisfy the "Committee on Practice".

Assuming that the Plaintiff never did see Amman's letter of March, 1954, it does not follow that the words "proposed deficiencies" as used in the agreement between parties of July 28, 1954 means the gross deficiencies without any reference to the proposed settlement of the Government. The Defendant contends that "proposed deficiencies" means the deficiencies as they would exist if the Government's settlement proposal was accepted by the Defendant and applied to the Income Tax Deficiencies.

The question of interpretation is one for this Court to determine in accordance with the strict rules of construction pertaining to contracts between an attorney and his client, and does not turn on questions of credibility or on the demeanor and appearance of the parties on the witness stand. This determination should be made solely upon the "written evidence" and the "undisputed facts". This Court should substitute the Defendant's correct interpretation of this language for the erroneous interpretation of the Court below J.D. Hedin Cons. Co., Inc. v. F.S. Bowen Elec., (App. D.C. 1960) 106 U.S. App. D.C. 386, 273 F2d 511.

III

THE WRITTEN AGREEMENTS WERE ENTERED INTO AFTER THE ATTORNEY - CLIENT RELATIONSHIP HAD COMMENCED.

The rationale for the rule of Spilker v. Hankin, 88 U.S. App. D.C. 206, 188 F2d 35, and in Re Howell, 215 N.Y. 466, 109 N.E. 572 is that in the drafting and execution of Attorney's fee contracts the Courts will carefully supervise its officers so as to avoid the ever present danger of duress. That danger was present here when the Plaintiff, for the first time, obtained physical possession of all the documentary evidence from the Defendant's prior lawyer, Amman, who had fully withdrawn from the case several days earlier. On the day after this was done the Plaintiff presented the Defendant with the written agreements of July 28, 1954 for his signature. Obviously, the Defendant was then under some "compulsion"

to sign this agreement in that he was aware from his experience of the week before, with Amman, that unless and until, he made arrangements for the full compensation of his Attorney he could not again obtain possession of his documents. Thus, a refusal to sign the agreements presented by the Plaintiff would have caused a further delay in a case which was already many years old. At this time all of the Defendant's assets were in escrow pending the disposition of the Tax Case, and interest at Six Percent (6%) was accruing on whatever was ultimately determined to be the tax liability. Thus for all practical purposes the relationship of Attorney and Client had commenced prior to the execution of the written agreements of July 28, 1954 between the parties and the rules of interpretation set forth in Spilker v. Hankin, supra and in Re Howell, supra, are applicable.

IV.

AMMAN'S LETTER OF MARCH 8, 1954
WAS RECEIVED BY THE PLAINTIFF.

The Plaintiff's testimony that he never saw the letter of March 8, 1954 is difficult if not impossible to believe. The Plaintiff admitted receiving the prior letter of February 1, 1954 in which Amman stated:

"I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week." (J.A. 356, Plaintiff's Exhibit No. 3.)

The Plaintiff produced at the trial many other letters exchanged between the Defendant and Amman and approximately 50 exhibits, the great majority of which were letters of one sort or another. The only letter of any significance which he failed to produce was the letter of March 8, 1954.

The Plaintiff obtained this correspondence and the other documents dated prior to July 27, 1954 either from the Defendant or from Amman. Amman accepted full payment from the Defendant for his services with

the specific understanding that he would deliver to the Plaintiff all of the documents dealing with the Defendant's claims. In accordance with the usual practice of attorneys which it is apparent Amman followed, included in these documents was a carbon copy of the letter of March 8, 1954. For Amman to have failed to deliver this copy, with literally the hundreds of other documents covered by the receipt of July 27, 1954, having promised to do so, would have been strange indeed. All the testimony as to Amman's reputation as a lawyer indicates that he did, in fact deliver this letter to the Plaintiff in accordance with his agreement.

Assuming Amman did not deliver his copy of the letter of March 8, 1954, it must then be assumed that the Defendant delivered to the Plaintiff the original of the letter which had been mailed to him by Amman. Admittedly the Plaintiff met with Amman before July 28, and had several discussions with him about the case in the presence of the Defendant. The letter of March 8, 1954, contained the crux of the settlement insofar as it was applicable to the Income Tax matter. If the Defendant delivered any correspondence to the Plaintiff he certainly would have delivered this letter to him, as it represented hours of work on the part of Amman for which the Defendant had paid substantial fees.

When the Plaintiff testified that he did not receive this letter, he was, in effect, testifying that Amman deceitfully failed to deliver it to him and the Defendant concealed it from him during the many months that he was the Defendant's only counsel. The testimony of the Plaintiff in this regard is incredible and completely unworthy of belief. The Plaintiff did receive this letter and knew of its contents and when he used the words "proposed deficiencies" in the Agreement of July 28, 1954 he knew that the Defendant interpreted those words in the light of Amman's letter which applied the settlement proposal to the deficiencies. The written agreement between the parties must, therefore, be interpreted accordingly.

V.

THE PLAINTIFF CANNOT RECOVER
ON A QUANTUM MERUIT BASIS

The Plaintiff contends that if the fee contract is not "valid and binding" then he is entitled to recover on a quantum meruit basis. The evidence of both parties is in complete and full agreement that there was a contract of employment on a contingent basis. The sole question before the Court below was the interpretation of the terms of this agreement.

It was never contended that the Plaintiff was employed on an hourly basis. In fact, this is precisely what the parties were attempting to avoid.

In this regard, this case is clearly distinguishable from Spilker v. Hankin, supra. There it was held that there was an agreement between the Attorney and Client which was invalid and could not be enforced. Here the Plaintiff must base his recovery on the agreement between the parties. The Defendant contends it was an agreement predicated upon improving a settlement proposal as it related to both the renegotiation and the tax matter. The Plaintiff says that as to the income tax matter it was based upon the "gross deficiencies" without any relationship to the proposed settlement. If the Plaintiff recovers at all he must recover on his interpretation of the agreement. Under the Defendant's interpretation of the agreement, since the Plaintiff failed to reduce the tax liabilities below that which were presented to him by his prior Attorney, Amman, he is not entitled to any compensation in addition to the Two Thousand Five Hundred Dollars (\$2,500.00) cash retainer paid.

Furthermore, the Plaintiff's case as set forth in his Complaint and in the Pretrial Order made no mention of a quantum meruit recovery. The Defendant's objection to the testimony as to the reasonable value of the Plaintiff's services was erroneously overruled by the Court below, (J.A. 86). Obviously the Defendant had not prepared his defense

along these lines and if the case is to be decided on a quantum meruit theory it should be reversed for a new trial so that the Defendant may have an opportunity to rebut the uncorroborated testimony of the Plaintiff as to the value of his services.

VI.

THE ISSUES DETERMINED BY STIPULATION IN TAX COURT IN THE RENEGOTIATION CASE WERE BINDING ON THE GOVERNMENT IN THE INCOME TAX MATTER.

The Tax Court of the United States is a Court of Record and any adjudication made by it is binding on the parties involved. Even were this not so in accordance with the terms of the Renegotiation Acts, as we submit it is, it is the law in accordance with well established principles of res judicata, Von Opel v. Brownell, 100 U.S. App. D.C. 341, 244 F.2d 789, U.S. ex. rel. New River Co. v. Morgenthau, 70 App. D.C. 171, 105 F.2d 50. It was Amman's intention to attempt to work out a satisfactory settlement on both the renegotiation and the income tax matters and to apply the constituent elements of the settlement to both. Conceivably the Government would prefer to settle the question of the expenses in the renegotiation matter by stipulation and then relitigate this issue in the income tax dispute. However, it was more likely that the settlement in the renegotiation matter of the expenses would be accepted by the Government in the income tax matter and, in fact, this was the way the settlement was ultimately effected to the very last penny (J.A. 232). In any event, upon the stipulation as to the expenses being executed and filed in the Tax Court the Defendant was bound by it in all subsequent litigation between himself and the Government in which this issue was involved. Renegotiation Act of 1943, 50 U.S.C.A. 1191 (e) (f).

This concept was the basis for the Agreement between the Plaintiff and the Defendant. The compromise or judgment was first to be obtained in the renegotiation matter and then this determination was to be applied

to the income tax matter. It was then understood that the Plaintiff would be paid a fee based upon the savings he had effected for the Defendant as against the payment required by the Government's settlement proposal, as it pertained to both matters. When the Defendant received a bill from the Plaintiff after the disposition of the renegotiation matter, he brought this understanding to the attention of the Plaintiff who took no action as to the payment of his fee until after the determination of the income tax matter. He in effect assented to the Defendant's insistence that the fee could not be calculated until both matters were decided, (J.A. 232).

VII.

THE AGREEMENT OF AUGUST 6, 1954 ON ITS FACE REQUIRES NO PAYMENT BY THE DEFENDANT FOR SERVICES RENDERED IN THE INCOME TAX MATTER

The Defendant contends that upon consideration of the uncontradicted oral and written evidence, it must be concluded that there was only one agreement between the parties which was later reduced to two written letter agreements which should, in turn, be interpreted as one agreement based upon the settlement proposal as set forth by Amman. When this is done, although the Plaintiff obtained a saving in the renegotiation matter, since it is exceeded by the loss in the income tax matter there was a net loss to the Defendant after the Plaintiff's representation and no fee is payable, (J.A. 412, Defendant's Exhibit No. 16).

Assuming, however, that the Court does not consider all of the evidence but literally interprets the language of the agreement of August 6, 1954, the Plaintiff is then not entitled to a fee for his services in the Income Tax matter.

In effect, the agreement of August 6, 1954 provides that in the determination of the fee, two calculations must be made. First, the deficiencies proposed will be reduced by "any amount repaid as a result of renegotiation" and secondly the Plaintiff will "not receive Thirty Percent

(30%) of the tax reduction resulting from any such renegotiation refund." The second phrase which is joined to the first portion by the conjunctive "and" is not an explanation of it but an addition to it. This is the way the agreement must be read, if it is to be interpreted literally and with no consideration being given to the extrinsic evidence. If this construction is applied, then the judgment of the Court below must be reduced to the extent that it is based upon the saving in the income tax matter, since after the amount repaid by the Defendant as a "result of renegotiation" is deducted from the "proposed deficiencies" the balance is exceeded by the final settlement resulting in a cash loss to the Defendant. It is not, therefore, necessary to proceed to make the second calculation as set forth in the phrase following the word "and", (J.A. 411, Defendant's Exhibit 16).

The Plaintiff states in his brief "that no lawyer in his right mind would accept or work" under the agreement as interpreted by the Defendant. It may also be said, however, that no client in his right mind would knowingly enter into the agreement as interpreted by the Plaintiff and the Court below. In accordance with that erroneous interpretation the Client entered into a contingent fee agreement to pay an Attorney even if after the Attorney's representation, the client must pay substantially more in settlement than he was required to pay prior to his employment of the Attorney.

Respectfully submitted,

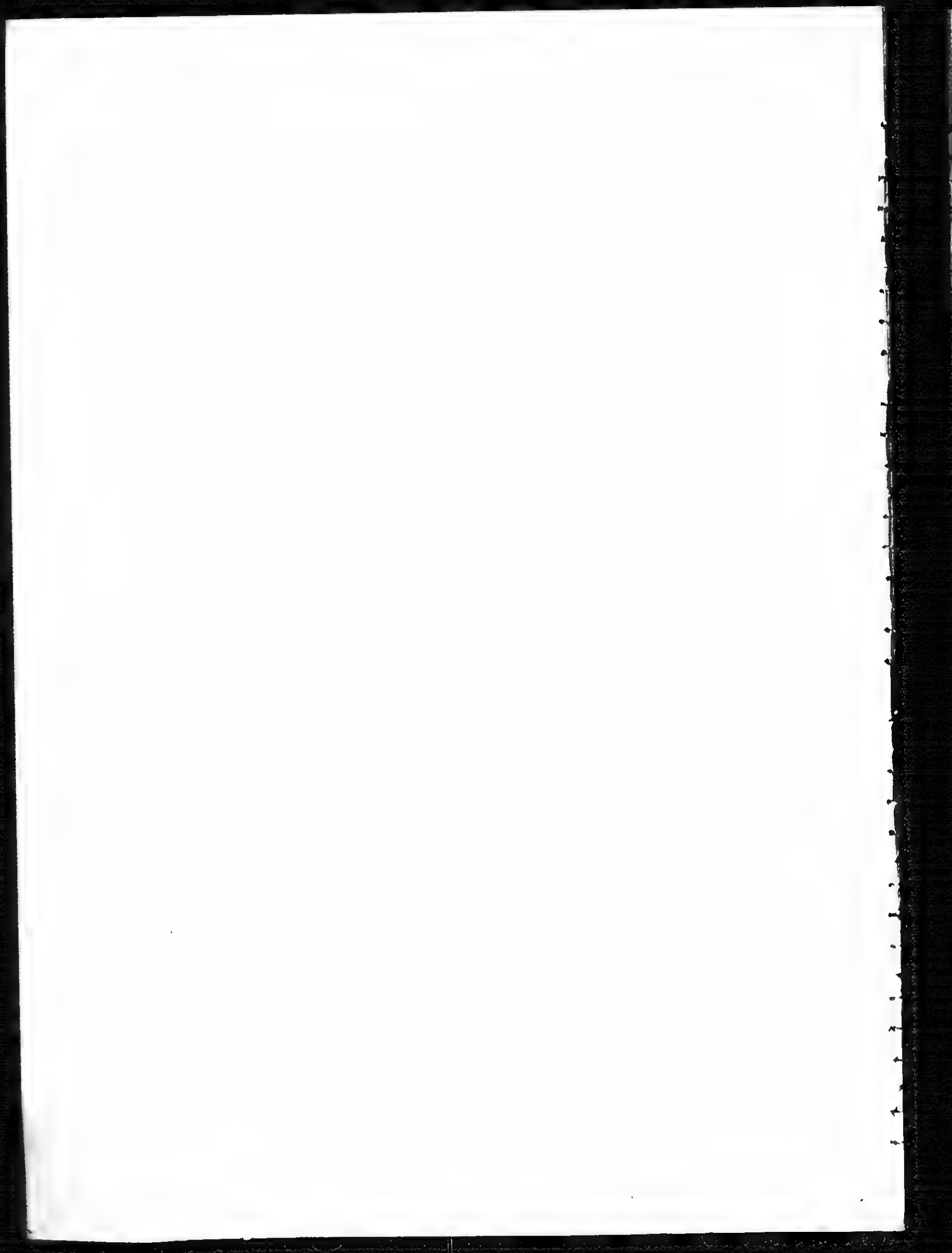
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

v.

United States Court of Appeals
for the District of Columbia Circuit

WILLIAM J. CASEY, FILED FEB 13 1964

Nathan J. Paulson
CLERK

PETITION FOR REHEARING

TO: THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, HONS. FAHY, BASTIAN and McGOWAN

The Appellant herein respectfully prays for a rehearing of the appeal decided by the Court on January 30, 1964, and for a rehearing en banc on the following grounds:

1. The finding by this Court that finding of fact # 7 was not "clearly erroneous" is not supported by the record herein.
2. The finding by this Court that finding of fact # 15 was not "clearly erroneous" was not supported by the record herein.

3. That finding # 16, undisturbed by this Court, was not "clearly erroneous" is not supported by the uncontroverted evidence and is erroneous as a matter of law.

This petition, for a rehearing, is respectfully directed to the Judges who heard argument thereon, for leave to reargue on the basis of the points enumerated above. It is also directed to all of the Judges of this panel en banc, by reason of the fact that the conduct engaged in by the Appellee, the plaintiff in the Court below, as an attorney in dealing with his client, Appellant herein, is, as a matter of law, distinctly at variance with the pronouncements of this Court and the Courts of the State of New York.

In this case, Appellee, an attorney, at a time when the relationship of attorney and client existed between the parties, entered into an agreement with the Appellant and caused the Appellant to discharge his former attorneys. Thereafter, and immediately upon receiving all of the papers from the prior attorneys, Appellee caused the original agreement between the parties to be amended on four separate occasions. In the final analysis each of these amendments substantially altered the original relationship between these parties to the benefit of the attorney Appellee. By the very act of compounding confusion, the Appellee succeeded in producing a series of agreements, on which he brought his action, which were not clear either from his own interpretation thereof or as subsequently interpreted by him. By the erroneous admission of evidence in the Court below, he interpreted his retainer agreements in a manner completely in opposition to the uncontroverted testimony of the defendant as to the terms and conditions of the original agreement between them.

The present decision, if permitted to stand, in effect, sets forth as a rule of law that a confusing, unclear, imprecise and confounding retainer agreement drawn by an attorney is to be construed in favor of such attorney and against the client, the Appellant herein. This has never been the law, but the affirmance of the decision of the Court

below, on the facts in this case, represents a departure from the established law thus calling for a re-examination thereof at this time.

POINT I

The Finding by This Court That Finding of Fact #7 Was Not "Clearly Erroneous" is Not Supported by the Record Herein

The attention of this Court is directed to finding # 7 in the Court below (J.A. 416), reading as follows:

"7. On July 28, 1954, Mr. Edell and Mr. Casey entered into two written fee arrangements. One agreement provided for a \$2,500. retainer fee plus 30% of the difference between the proposed tax deficiency and the final settlement, together with such costs as might be awarded in any action concerning tax deficiencies assessed against Mr. Edell for the calendar years 1943, 1944, 1945, 1946 and 1947, but provided that no fee should be based on any tax reduction resulting from any renegotiation refund paid by Mr. Edell to the Government.

"The other agreement entered into between the parties on this date provided that Mr. Casey's fee on the renegotiation matter should be 30% of the difference between the Justice Department offer of \$138,000. and the final settlement of the dispute. The figure of \$138,000. in this agreement was an error, and it should have read \$183,000., which was the lowest Justice Department offer."

The error in this finding is that it treats the two documents of July 28, 1954 as being the agreements between the parties and completely ignores the facts established by the record that these two written agreements resulted from a single prior written agreement of July 15, 1954 between the parties which were represented by CASEY as being identically the same in meaning as the prior single agreement of July 15, 1954, but which, by EDELL's uncontradicted testimony were substantially different in legal effect and meaning.

For clarity, the Appellant-Client will be referred to in this petition as EDELL and the Appellee-Attorney, as CASEY. In the early part of 1954 EDELL was engaged in tax litigation and had most of his available funds deposited in escrow against a pending renegotiation case arising out of EDELL's earnings in 1943, 1944 and 1945. Interest at 6% was accruing against whatever the ultimate award would be in this Tax Court proceeding. In addition, deficiencies were claimed by the Government on EDELL's income tax for the same period, but this proceeding necessarily depended on the conclusion of renegotiation. EDELL's then attorney, a Mr. AMMAN, had, through negotiations, succeeded in obtaining a tentative agreement in the renegotiation matter that \$183,000. would be considered the renegotiable income and that this amount, when reduced to the actual cash required from Mr. EDELL was \$137,500., but referred to generally between all of the parties as \$138,000. If the renegotiation matter were settled for that figure it included an allowance of approximately \$60,000. for business expenses for EDELL for the 3 years in question. Based on those tentative figures, Mr. AMMAN, as affirmed by exhibit # 37 offered by the plaintiff, Appellee, on March 8, 1954 advised EDELL that his consequent tax liability for the 3 years in question would be \$41,000., assuming that the same expenses were allowable in the income tax proceeding as were offered in the renegotiation case. As a matter of law, the expenses offered in the renegotiation case, would have been binding on the Income Tax Bureau under the Renegotiation Act of 1943, 50 U.S.C.A. 1191(e) (f). EDELL's total payments would have been \$179,000.

EDELL had been represented by CASEY on other matters from as early as January 1954 and during the period when the foregoing offers of settlement were conveyed to EDELL. On May 14, 1954 Mr. AMMAN offered to turn over all of the papers in this proceeding to Mr. EDELL upon payment of a balance due for fees of \$1,855.00 and at the same time stated that he would not represent EDELL further in the matter (plaintiff's exhibit # 4, J.A. 366, 367).

There were meetings between Mr. AMMAN and Mr. CASEY pertaining to the current status of these two related matters, meetings running from March, 1954 up to just prior to July 15, 1954. On that date, critical for the purposes of the trial below and this appeal, a single written agreement was entered into between CASEY and EDELL. EDELL's testimony, uncontroverted and uncontradicted, was that this agreement, in writing, entered into in New York State provided for a retainer of \$2,500.00 and that CASEY would receive thirty (30%) per cent of the difference between the amount that CASEY was able to reduce EDELL's indebtedness below the sum of \$179,000., based on the sum of \$138,000. required on the renegotiation case and the \$41,000. which would then follow as being owing on the income tax matters for the years 1943, 1944 and 1945. The sum of \$2,500.00 would have been credited against such fee.

CASEY was then of the opinion that EDELL's income for those years was not negotiable. Stated succinctly, to the extent that EDELL had to pay less than the total of \$138,000. and \$41,000. or \$179,000. covering both the renegotiation and the income tax matters, CASEY would profit to the extent of thirty (30%) per cent after crediting the \$2,500.00 paid as a retainer.

In CASEY's testimony on the question of the first agreement of July 15, 1954 in his pre-trial deposition (J.A. 7 and 8), he stated:

"We did have an agreement along those lines which embodied the tax problem and the renegotiation problem."

He then said,

". . . we did change the agreement. There was a predecessor agreement which superseded that. I don't have any copies of it."

Further on (J.A. 8), he was asked when the agreement was reduced to writing and when asked whether plaintiff's exhibit 5 dated July 28, 1954 was the first writing, CASEY testified,

" . . . that was not for the first time. I explained there was a previous document which said the same thing but the renegotiation and income tax were in one document and they were separated."

When he was asked whether he retained a copy of it, he testified (J.A. 8),

"I don't think so. We called that agreement off and entered into a new one and it was destroyed, I think. I think so."

He was unable to find it and later on he testified (J.A. 8),

"The original agreement was superseded by two separate agreements."

having reference to the two agreements of July 28, 1954 (plaintiff's exhibits 5 and 6). He also said that the \$2,500. retainer applied against both phases, but (J.A. 8), again affirming the existence of the single individual agreement he testified,

"Yes, but that was superseded."

Note, that in each instance the agreement of July 15, 1954 is referred to in the singular term.

When he was asked what change had taken place from the original single agreement to the two agreements of July 28, 1954 he testified, (J.A. 8),

"It didn't make any substantial difference in the terms of the agreement." (J.A. 9)

He again (J.A. 9) stated that the two separate agreements were basically the same as the original single agreement by stating,

"You see, it made no substantial difference."

He further said that the agreement was based on the offers

"as referred to in the correspondence of Mr. Amman and in the papers * * * " (J.A. 10)

The AMMAN correspondence (plaintiff's exhibit 3 and plaintiff's exhibit

37), required \$137,526.60 (or \$138,000. as generally referred to by the parties) from EDELL on the renegotiation matter and \$41,064.83 (or \$41,000.) on the income tax matter, for a total of \$179,000.

During the course of the trial, Mr. CASEY did not deny the existence of the basic agreement of July 15, 1954, contenting himself with saying evasively that he did not know whether there was or was not such an agreement (J.A. 103), although the testimony quoted above from the Record on Appeal was given by him two and one-half (2-1/2) years earlier in a deposition taken on June 23, 1960. He was read his testimony concerning the predecessor agreement during the course of the trial (J.A. 102), but there is no denial anywhere in the record from Mr. CASEY as to the original agreement of July 15, 1954. Although he admitted there was only one agreement covering both matters originally (J.A. 106), it is obvious from a reading of the testimony that he was trying desperately to get away from the original agreement of July 15, 1954, because its legal effect substantially differed from the amended agreements of July 28, 1954 (plaintiff's exhibits 5 and 6).

The importance to EDELL is that the original agreement was based solely, completely and entirely upon the figures set forth in Mr. AMMAN's letters, plaintiff's exhibits 3 and 37. The two agreements of July 28, 1954 (plaintiff's exhibits 5 and 6), drawn thirteen (13) days after the original agreement, and one day after CASEY received all of the papers from Mr. AMMAN, and after Mr. AMMAN had been paid and relieved, was not "substantially" the same because it lacked one major specification not easily discernible from CASEY's verbiage, namely, that the thirty (30%) per cent was to apply to any amount by which CASEY reduced the total amounts required under both proceedings below the \$179,000. provided in the AMMAN proposals. This was a material and substantial omission in the subsequent writings although CASEY told EDELL that it did not change their original agreement,

which would be honored. The only explanation he gave for breaking up the single agreement into two other agreements was that the tax matter would have to be handled separately and would require a separate retainer under the rules of the Treasury Department providing for contingency agreements and that that was the sole reason for breaking the July 15, 1954 agreement into two separate agreements of July 28, 1954 (J.A. 8). As a matter of record, the first contact that CASEY had in connection with filing the retainer agreement with the Internal Revenue Service was in October 1954, several months later than the change in the retainer agreement (J.A. 130).

The uncontradicted testimony of EDELL as to the agreement with CASEY (J.A. 217) states, with reference to the meeting with Mr. Casey on July 15, 1954 in New York City at his office:

"We had discussed the entire matter by this time, we had both known exactly what we were thinking about. And I told Mr. Casey that I would give him 30% of any savings that he could establish in the renegotiation and tax cases based upon the \$138,000. renegotiation settlement that had been arrived at with the Justice Department and the 40-odd thousand dollar tax figure that had been established by Mr. Douglas Amman, plus the fact that I would give him \$2,500.00 as a retainer which would be subtracted from any future moneys that he would receive in the effort to secure additional savings."

EDELL testified that CASEY agreed to that and CASEY drew an agreement which was signed in CASEY's office on July 15, 1954. He further testified (J.A. 218) that CASEY told him that he had to split the agreement in two parts because of the Committee on Practices of the Treasury Department and quoted Mr. CASEY as stating,

"but that the terms and conditions of it would remain the same,"

and that this occurred at CASEY's office on July 28, 1954 (J.A. 218).

EDELL's testimony was not controverted in any respect either on cross-

examination or by rebuttal testimony and it should clearly appear from this recital that the agreement sued on by CASEY, plaintiff's exhibits 5 and 6, was not "substantially" the same as the original agreement of July 15, 1954, and that such change was made after the relationship of client and attorney had been established.

Any finding that plaintiff's exhibits 5 and 6, each dated July 28, 1954 was the agreement between the parties does not have evidence to support such a finding under the rules of this Court. As a matter of law and construction, there is no support for this finding either by the Court below or by this Court. There was not only duress, but fraud and misrepresentation practiced by CASEY upon EDELL in splitting the original agreement into two parts. The original agreement of July 15, 1954 provided for 30% of the saving based upon the over-all picture of liability of \$179,000. represented by the AMMAN estimates. It was a fraud upon EDELL to represent the July 28, 1954 agreements as being the same in effect although EDELL had no one else to rely upon since CASEY was his only attorney in this connection (J.A. 218). It was fraudulent to tell EDELL that the split-up was required by the Committee on Practices of the Treasury Department as a means of covering the fact that CASEY substantially improved his position by the new agreements of July 28, 1954. It was also an improper practice to redraw the original agreement so as to provide for 30% on any savings in the income tax matter without first giving effect to the fact that the sum of approximately \$60,000. for business expenses would obviously have to be considered as basic and proper before the application of any fee formula for CASEY. The splitting of the two agreements resulted in an interpretation completely foreign to the original agreement between the parties and EDELL did not understand that this was the legal effect of such change nor was he so advised by CASEY.

At this point, certain well established principles of law, both in New York State and in this District, are called into play. In New York it has been held that an agreement between an attorney and his client which is

modified after the relationship exists between them so as to benefit the attorney, results in a void agreement under some interpretations.

The courts of the State of New York have severely condemned fee agreements which are changed and which result in greater compensation to the attorney. In 3 N.Y. Jurisprudence at page 498, § 95, appears the following rule of law applicable to this situation:

"Ordinarily, an agreement made by a client with his counsel, after the latter has been employed, by which the original contract is varied and greater compensation is secured to the counsel is invalid. (re Howell, 215 N.Y. 466, 109 N.E. 572, Blaikie v. Post, 137 AD 648, 122 N.Y.S. 820, Haight v. Moore, 5 Jones & S. 161). Such an agreement has been regarded as without consideration. (Blaikie v. Post, 137 AD 648, 122 NYS 292, re Raymond, 214 AD 622, 212 NYS 577, App. Dism'd 242 N.Y. 534, 152 NE 415; re Smith's Estate, 214 AD 622, 212 NYS 577)"

If ever a situation was presented which called for the condemnation of this type of conduct on the part of an attorney, the facts in this case would seem to call for complete disapproval.

Reference is again made to 3 N.Y. Jurisprudence, page 497, § 94, which states the rule of New York to be:

"However, contracts between attorney and client made after the relation has been established are construed most strictly against the attorney (re Howell, 215 N.Y. 466, 109 NE 572) and are closely scrutinized. (re Howell, supra, Hitchings v. Van Brunt, 38 N.Y. 335, Ransom v. Ransom, 147 AD 835, 133 NYS 173; Haight v. Moore, 5 Jones & S. 161). No unfair advantage may be taken of the client in such a situation. (re Vaupel, 266 AD 723, 40 NYS 2d 956). In fact, there is a presumption of unfairness or invalidity attaching to a contract for compensation executed by an attorney and his client after the establishment of the fiduciary relation (Brotherson v. Consalus, 26 How. Pr. 213, Brock

v. Barnes, 40 Barb. 521) and the burden of showing that a contract for compensation, executed by an attorney and his client during the existence of the fiduciary relation is fair and reasonable, and free from undue influence rests on the attorney. (re Howell, 215 NY 466, 109 NE 572; Whitehead v. Kennedy, 69 NY 462, re Vaupel, 266 AD 723, 40 NYS 2d 956, Goldberg v. Goldstein, 87 AD 516, 84 NYS 782)."
(Emphasis supplied)

POINT II

**The Finding by This Court That Finding of Fact #15
Was Not "Clearly Erroneous" Was Not
Supported by the Record Herein**

The Court below made the following finding of fact:

"15. The original intent of both Mr. Casey and Mr. Edell was to enter into a renegotiation fee agreement based on the best Justice Department offer of settlement as the basis from which savings were to be calculated, and such best offer was in fact \$183,000 and not \$138,000. The change in the agreement, made only nine days after the original error, was not unfair or unreasonable, nor a result of duress or fear on Mr. Edell's part."

In Point I hereof, the factual situation pertaining to the written agreement of July 15, 1954, is set forth at length. The finding # 15 is not supported by those facts since it was the original intent, as testified to by Mr. EDELL and not controverted on his cross-examination, or by CASEY's witnesses' testimony that the agreement was based on a lumping of the amounts that EDELL would have to pay totalling \$179,000 if the Government's proposal for settlement of the renegotiation and income tax cases, as outlined by Mr. AMMAN were to be accepted. The agreement was never limited to considering the rene-

gotiation case and its results separately and independently without regard to the income tax matter. The finding says that the best offer was in fact, \$183,000 and not \$138,000. The facts borne out by this record were that \$138,000 was the amount that EDELL would have to pay if he accepted the figure of \$183,000 as being excessive profits. The larger figure was the gross proposed disallowance, the smaller figure, the net dollars to be paid by EDELL. EDELL was interested in the amount of cash that he would be required to pay and as he testified, it was \$138,000. on the renegotiation matter and \$41,000. on the income tax matter. Substitution by the Third or Fourth Amendment to EDELL's agreement of the figure of \$183,000 and basing CASEY's saving of 30% on any lesser gross figure arrived at in the renegotiation proceeding was never explained satisfactorily to EDELL; CASEY constantly told him that the original agreement arrived at on July 15, 1954 was still in effect and was not being changed. At the time that these changes were made, EDELL had discharged his former attorney, he had no one else to go to, and only CASEY, in his own mind, knew how this change, required by him, would work out in actual practice. To EDELL, the figures were related, one being the gross figure, the other being the net dollars payable on that figure and seemed to be consistent. In any event, this change calls for the sharpest scrutiny since it was made three weeks after the original agreement of July 15, 1954 was entered into, and nine days after the second set of agreements were drawn and represented the fourth change made.

It cannot be argued that an arrangement to pay CASEY 30% of any reduction in the figure of \$183,000 was not a substantially different and better arrangement for CASEY than to pay him 30% of any saving that he effected under the original agreement of July 15, 1954 in which the percentage would be applied to any saving below the sum of \$179,000. which would close both matters for EDELL under the Government offers as translated by the AMMAN letters (plaintiff's exhibits 3 and 37). In actual dollars and cents, EDELL paid \$213,079.33 (defendant's exhibit

16, J.A. 411) as against the figure of \$179,000 or an excess of \$34,079.33, and in addition, was required by the decision of the Court below to pay the additional sum of \$16,000 to CASEY. Any agreement which was drawn after the original agreement between the parties of July 15, 1954 which could result in this situation for EDELL, was not only unfair and unreasonable but is unconscionable.

In construing a contingent fee contract, the Supreme Court of Minnesota said:

"The contract should be read as a whole, and the intention of the parties thereto arrived at from a consideration of the entire correspondence read in the light of the situation existing at the time and the results sought by the defendant, and those achieved." Gray v. Bemis, 1915, 128 Minn. 392, 151 N.W. 135. (Emphasis supplied)

The Court below was clearly erroneous in making finding of fact # 15.

POINT III

That Finding of Fact # 16, Undisturbed by This Court, Was Not "Clearly Erroneous," is Not Supported by the Uncontroverted Evidence and is Erroneous as a Matter of Law

Finding # 16 which appears at page 418 of the Joint Appendix reads as follows:

"16. The plaintiff performed legal services in accordance with his fee agreements with the defendant, and as of Feb. 25, 1959 there was owing to him the following:

"9,900.00 for the saving effected on the renegotiation claim; \$8,013.80 for the reduction of the tax deficiencies for the years 1943, 1944, and 1945; and \$603.50 for expenses incurred by plaintiff; or a total of \$18,517.30.

"On the above debt of \$18,517.30 the plaintiff is entitled to a credit of \$2,500.00 for the previous paid retainer fee in that amount.

"Therefore, the net amount due plaintiff for his services and expenses is the difference between \$18,517.30 and \$2,500.00 or \$16,017.30.

"Interest is due at 6 per cent per annum on \$16,017.30 from February 25, 1959 to date of payment. Plaintiff is entitled to judgment upon the foregoing indebtedness of the defendant."

The error in this finding is that it is based upon "his fee agreements with the defendant," the word "his" having reference, of course, to CASEY. These agreements are those of July 28, 1954 (plaintiff's exhibits 5 and 6) but the Court below, and this Court, upon appeal, has given no consideration to the existence of a written agreement between the parties on July 15, 1954 which, through a series of devious convolutions ultimately transmuted an agreement to better a given situation on a contingent basis to one in which CASEY could not lose because under any circumstances, expenses had to be allowed in the income tax proceeding since none were considered under the original proposals by the Government. There is no evidence worthy of its name to support the position taken by CASEY that this was understood or clearly stated to his client, EDELL.

At this point, the very language of CASEY's agreements of July 28, 1954 and in particular, plaintiff's exhibit 6, is brought into focus. CASEY used the words "the proposed deficiencies" and was permitted to testify that this represented the gross amount of tax sought by the Income Tax Bureau before any consideration was given to the renegotiation matter, which is a fantastic perversion of common sense. For every dollar that was repaid to the Government on the renegotiation matter, there had to be, as a matter of law and accounting practice, an equivalent reduction in the income on which the income tax deficiencies had been based, with a consequent reduction in income tax.

In addition, and of greater importance, was the fact that no one disputed the propriety of an allowance for business expenses which would be applicable to those proposed deficiencies and that such expenses would be found and determined in the renegotiation matter which had to be determined first before any income tax discussions could be had, even according to CASEY's testimony. Even though CASEY's testimony as to the meaning of the words "proposed deficiencies" was improper and should not have been admitted over objections by EDELL's counsel, (JA 34, 38) CASEY's interpretations were less logical and less meaningful in a business sense than EDELL's testimony that the proposed income tax deficiencies meant the sum of \$41,000 set forth as EDELL's income tax liability in AMMAN's letter (plaintiff's exhibit 37), an exhibit vouched for by CASEY.

CASEY conceded ambiguity and lack of clarity in his contracts (J.A. 16). It is and has been the law in New York, consistent with the law of the District of Columbia, that where the plaintiff's version of the meaning of his contract is controverted by a defendant, his client, and where the client's version is logical and reasonable under the factual situation presented, under those circumstances, the client's version of the facts must be accepted because any ambiguities under the ordinary rules of law must be resolved against him who drew the agreement, and where the agreement is a retainer agreement between attorney and client, it must be resolved against the attorney.

Again reference is made to 3 N.Y. Jurisprudence, § 93 at page 496, the most recent work expressing the law of the State of New York clearly in the following terms:

"An attorney ought to have his agreements with his clients so plain as not to require construction. (Samuels v. Simpson, 144 AD 466, 129 NYS 534, aff'd 207 NY 643, 100 NE 1133; Mackey v. Passaic Stone Company, 36 NYS 2d 232, aff'd 266 AD 690, 40 NYS 2d 613, aff'd, 292 NY 525, 54 NE 2d 208). An ambiguous agreement between attorney and client must be construed most strictly against the

attorney (re Raymond, 214 AD 622, 212 NYS 577, App. Dism'd 242 NY 534, 152 NE 415; re Hawke, 148 AD 326, 133 NYS 23, aff'd 204 NY 671, 98 NE 1097; Butts v. Carey, 143 AD 356, 128 NYS 533; McIlvaine v. Steinson, 90 AD 77, 85 NYS 889, 74, NE 1119; Harkany v. Zisman, 96 NYS 214) even though the client signed the agreement after having received independent advice. (Samuels v. Simpson, 144 AD 466, 129 NYS 534 aff'd. 207 NY 643, 100 NE 1133.)" It is a general rule with respect to an agreement of retainer, that when it is capable of more than one construction it is to be construed "most favorably, most strictly in favor of the client." (McAvoy v. Schramme, 238 AD 225, 264 NYS 181, aff'd. 263 NY 548, 139 NE 691; Gehr v. Finkelstein, 129 NYS 2d 284).

In "Fee Contracts of Lawyers" by Earl W. Wood, Prentice Hall Inc., at page 151, the rule is stated:

"Sec. 50. Relationship of Parties. As a general rule, if, after the application of the rules of construction, the fee contract is still doubtful, or ambiguous, it will be construed in favor of the client if the lawyer who rendered the services drew the contract. Whiting v. Davidge (1904) (D.C.) 23 App. 156; Petition of Raymond (1925) 214 AD 622, 212 NYS 577."

and at page 152,

"It has been repeatedly held that any ambiguity in the fee contract must be construed in favor of the client and against the attorney if the relationship of attorney and client came into existence before the fee contract was entered into. This is based upon the principle that a lawyer is legally bound to see that his express fee contract with his client is certain, precise, clear, and exact in all particulars, and that it is perfectly intelligible to the client in every respect, including the legal effect of its language, whenever such contract is made after the attorney-client relationship has been already established."

the author further states at page 153,

"Doubtful or ambiguous language in a contingent fee contract must be construed most favorably to the client."

THE INCOME TAX COMPUTATIONS

In finding # 17 the Court below, and this Court, by affirmance, adopted CASEY's version of the meaning of his fee contracts, by oral testimony, over objection by EDELL's counsel (J.A. 34, 38). If CASEY's agreements needed interpretation they, as a matter of law, had to be strictly construed in favor of EDELL.

Even assuming arguendo that the agreements of July 28, 1954 (plaintiff's exhibits 5 and 6), and the amendment of August 6, 1954 (plaintiff's exhibits 7, J.A. 367-370), were the basic agreements (eliminating from consideration the single original agreement of July 15, 1954), the plain language is capable of determination without requiring any explanation as to the meaning of its terms. The Court below erroneously permitted parole testimony from CASEY to vary the clear meaning thereof, if we adopt the theory that the agreements of July 28, 1954, and August 6, 1954, were clear on their face.

An analysis of the agreement of July 28, 1954, plaintiff's exhibit 6, relating to the tax matter and presenting the figures least favorable to EDELL shows the following:

<u>LANGUAGE IN CASEY'S AGREEMENT</u>	<u>AMOUNT</u>
"proposed deficiency" or "deficiency proposed" (J.A. 368)	\$175,944.29 J.A. 393, J.A. 411, J.A. 417.
"reduced by any amount repaid by me to the United States government as a result of renegotiation" (J.A. 368)	\$115,180.53 J.A. 411

"deficiency proposed by the U.S. government will be reduced by the amount repaid by me to the U.S. government as a result of renegotiation * * *"
(J.A. 368) "Proposed Deficiency" under the Casey Formula :

\$ 60,763.76
J.A. 411

"the final settlement (of the income tax matter)" (J.A. 368)

\$ 97,898.80
J.A. 375

Amount paid by Edell in excess of adjusted "proposed deficiency" in accordance with Casey's terms.

\$ 37,135.04
J.A. 408

The foregoing illustrates the literal meaning of CASEY's agreement of July 24, 1954. EDELL paid an excess of \$37,135.04 on which no fee was payable to CASEY, using his own language — finding # 16 is clearly and erroneously wrong in making any award for \$8,013.80 for results of the income tax matter. The Court below, in accepting CASEY's oral testimony, and his interpretation of his contract, was in error, and proceeding contrary to the well established rules of construction.

One further peculiarity which has escaped attention up to this moment, and which reinforces EDELL's testimony, points up the fact that CASEY, the author of plaintiff's exhibits 5, 6 and 7, comes up with two different results when computing his claim for fees on the renegotiation matter alone. This is covered by plaintiff's exhibit 5 and relates to Finding # 16.

Excluding any consideration of disbursements, Finding # 16, by the Court below, and adopted by this Court, reads (J.A. 418),

"\$9,900 for the savings effected on the renegotiation claim; * * * "

In Finding #9 the lower court, referring to the renegotiation matter (J.A. 416), stated,

" * * * Mr. Edell had received as excessive profits for the years 1943-1945 the sum of \$150,000 (\$26,000 in 1943; \$54,000 in 1944; and \$70,000 in 1945) as contrasted with the best settlement offer of the Justice Department of \$183,000 for the years 1943-1945 (Plaintiff's Exhibit 2). As a result of this judgment Mr. Casey became entitled to a fee of \$9,900 which is 30% of \$33,000 or the difference between the ultimate court judgment and the lowest settlement offer of the Justice Department * * * "

But even CASEY found room for another method of computing the renegotiation fee. In his exhibit (plaintiff's # 27, J.A. 389-90), CASEY, using the same basic figures of \$183,000 offered, and \$150,000 final determination came up with a fee figure of \$10,772.85. This figure is another of CASEY's computations. Even his basic agreement, assuming exhibit 5 could stand alone, and ignoring the July 15th, 1954 agreement, can be interpreted to show a fee of either \$9,900 or \$10,772.85. The ambiguity is patent. If CASEY can come up with two results, can it be said that his fee agreements were clear, or precise, or intelligible to the client?

EDELL's testimony, that the net cash saving over the outstanding offers totalling \$179,000, and that the renegotiation and income tax matters were to be lumped together before giving consideration to CASEY's fee of 30%, is confirmed by Finding # 9, the last sentence of which, prepared by CASEY's counsel, reads, at J.A. 417,

"Mr. Casey agreed to await payment of this fee until the tax matter was also settled."

This was not a matter of generosity. The Record is clear that the renegotiation matter did not stand separate and apart from the income tax matter. The benefit to EDELL from the renegotiation matter was wiped out by the amount ultimately paid in the income tax matter.

Finding # 16, in separating the two items, and ignoring the requirement sustained by EDELL's testimony, that CASEY's fee was 30% of any improvement under the cash amount of \$179,000 which would have settled matters in toto, for EDELL, was "clearly erroneous".

CONCLUSION

The findings of fact # 7, 15 and 16 should have been found "clearly erroneous" under the rules of this Court primarily by reason of the law of construction applying to the lawyer-client relationship; the affirmation provides CASEY with a financial advantage never contemplated between the parties when the original agreement of July 15, 1954 was drawn. The judgment itself is based on testimony erroneously permitted in evidence by the Court below which permitted CASEY to interpret his own agreement to his own benefit and advantage, despite the rules of construction requiring an opposite result.

WHEREFORE, petitioner respectfully prays for a rehearing of the within appeal by the original Court which heard the matter and for a hearing en banc, and that the judgment appealed from be reversed.

Respectfully submitted,

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Attorneys for appellant

Good Faith
CERTIFICATE OF ~~SERVICE~~

I hereby certify that the above Petition for a rehearing is presented in good faith and not for delay.

Respectfully submitted,

By: _____

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JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

538

HARRY EDELL,

Appellant,

v.

WILLIAM J. CASEY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 1 1963

Nathan J. Paulson
CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,813

HARRY EDELL,

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v.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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JOINT APPENDIX

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JOINT APPENDIX

[Filed Feb. 26, 1960]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM J. CASEY
122 East 42nd Street
New York, New York

Plaintiff

v.

HARRY EDELL
c/o University Club
1135 16th Street, N. W.
Washington 6, D. C.

Defendant

CIVIL ACTION NO. 2788-59

COMPLAINT FOR ATTORNEY'S FEES

1. This Court has jurisdiction in that the amount in controversy exceeds the sum of \$3,000.

2. On or about July 28, 1954, the defendant retained and employed the plaintiff, who was a duly licensed and practicing lawyer, as his attorney to take all necessary and proper action to settle certain income tax and renegotiation disputes then pending with the United States of America, and contracted and agreed to pay certain attorney's fees to the plaintiff on the basis of the results achieved by him. A copy of such fee and retainer agreements is attached hereto, marked Plaintiff's Exhibit "A", and is incorporated herein by reference.

3. Pursuant to such retainer agreement, the plaintiff obtained for the defendant a final settlement of his renegotiation liabilities on or about February, 1959, by means of a decision of the Tax Court of the United States, and of his income tax liabilities by a settlement which was effected with the Internal Revenue Service in New York. At the request of the defendant, payment of attorney's fees for such services

was deferred until the tax deficiency had been settled, which occurred on or about the date above set forth.

4. As a result of the plaintiff's rendition of legal services in accordance with the said retainer agreement, the defendant became and is liable to him for attorney's fees in the following amounts:

- (a) In the renegotiation case, the difference between \$183,000 (the best offer made by the Department of Justice) and \$150,000 (determined to be excess profits by the Tax Court) represents a saving of \$33,000. Plaintiff is entitled to a fee of 30% of such saving, or \$9,900.
- (b) Total tax savings for the years 1943, 1944, and 1945 over the amount of deficiency asserted by the Government amounted to \$28,712.67, of which the plaintiff is entitled to 30% as attorney's fees, or \$8,613.81.
- (c) Unreimbursed disbursements made by the plaintiff on behalf of the defendant totaled \$1,021.95.

5. The defendant is indebted to the plaintiff in the sum of subparagraphs (a), (b), and (c) of Paragraph 4 above, amounting to \$19,535.76, minus \$2,500 paid by him as a retainer fee, leaving a net balance owing of \$17,035.76, which defendant has failed and refused to pay despite demands made upon him for the payment thereof.

WHEREFORE, plaintiff demands judgment of the defendant in the sum of \$17,035.76, together with interest and costs.

/s/ William J. Casey,
Plaintiff

DANZANSKY & DICKEY

By /s/ Raymond R. Dickey

/s/ Marshall E. Miller

COUNSEL FOR PLAINTIFF

STATE OF NEW YORK)
COUNTY OF) ss:

WILLIAM J. CASEY, being duly sworn, says that he has read the foregoing Complaint for Attorney's Fees subscribed by him, that he understands the contents thereof, and that the matters and things therein stated he verily believes to be true.

/s/ William J. Casey

[JURAT - Dated Oct. 2, 1959]

PLAINTIFF'S EXHIBIT "A"

New York, N. Y.
July 28, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my attorney to take all steps, proceedings and actions necessary, or that you may deem proper to settle my income tax disputes currently pending with the United States Government.

I hereby tender the sum of \$2,500.00, which is to be a minimum fee for your services. I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement, together with such costs as may be awarded in any action instituted by you on my behalf concerning tax deficiencies assessed for the calendar years 1943, 1944, 1945, 1946, and 1947, and any recovery made on a refund claim to be filed with respect to a tax paid on a sum of \$121,200 received in 1952 in settlement of litigation in California. It is understood and agreed that, in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount repaid by me

to the United States Government as a result of renegotiation and that you will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund.

It is further understood that the \$2,500.00 paid to you now will, in no case, be returned to me, but, in the event of a settlement, it will be used to reduce the contingency fee.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.

Dated: New York, N. Y., July 28, 1954

/s/ William J. Casey

PLAINTIFF'S EXHIBIT "A" (Continued)

New York, N. Y.
August 6, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my lawful attorney to take all steps, proceedings and actions necessary, or that you may deem proper in the settlement of my dispute with the Department of Justice concerning the Renegotiation Act of 1951, as amended.

I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the Justice Department offer of One Hundred Eighty-Three Thousand Dollars (\$183,000.00) and the final settlement of the dispute. It is understood that your compensation is limited to the amount stipulated in this agreement.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.

Dated: New York, N. Y., August 6, 1954

/s/ William J. Casey

[Filed March 21, 1960]

ANSWER OF DEFENDANT

First Defense

The Complaint fails to state a claim against this defendant upon which relief may be granted.

Second Defense

The contract entered into between plaintiff and defendant related to the dispute over income taxes for the years 1943, 1944, 1945, 1946 and 1947 and the renegotiation case referred to therein. Defendant says that plaintiff breached said contract in that plaintiff failed to represent the defendant with reference to said dispute for income taxes for the years 1946 and 1947, and that plaintiff only partially represented the defendant with reference to said dispute for income taxes for the years 1943, 1944 and 1945; that the final settlement for the income tax liability of defendant for all of said years from 1943 - 1947, inclusive, was made by counsel other than plaintiff, whom defendant was obliged to employ to complete said matters; that defendant says, therefore, that said contract is void and of no force and effect.

Third Defense

Answering the allegations of the Complaint, the defendant says as follows:

1. Defendant is not required to answer Paragraph 1.
2. Defendant admits that he entered into the contract referred to as Plaintiff's Exhibit A, except that the figure "\$183,000.00" stated therein was intended by the parties to be and should be "\$138,000.00" and defendant therefore denies that the figure \$183,000.00 as stated in said Exhibit A is correct; that for greater certainty as to the terms and legal effect of said contract, defendant refers to Plaintiff's Exhibit A. Defendant admits that plaintiff is a duly licensed and practicing lawyer. All other allegations of this paragraph are denied.
3. Defendant denies all of the allegations of Paragraph 3. Further

answering, defendant says that plaintiff represented him in the renegotiation case and did some work with reference to the dispute over income taxes for the years 1943, 1944 and 1945, but by reason of the manner in which the plaintiff handled the aforesaid matters, and because of certain stipulations which the plaintiff entered into with the United States Government, without prior consultation with, or authority from, the defendant, to so stipulate, the liability of the defendant as thus determined and the payments defendant was obligated to make and did make pursuant thereto to the United States Government in the renegotiation case and for income taxes for the years 1943-47, inclusive, were increased considerably over what the defendant would have paid had he received from the plaintiff the measure of services called for by said contract.

4 and 5. Defendant denies that plaintiff rendered legal services to him in accordance with said contract. Further, defendant denies all of the allegations of Paragraphs 4 and 5, and denies that he is indebted to plaintiff for any legal services or otherwise. Defendant says that plaintiff, by his having breached the aforesaid contract, rendered the same void and of no force and effect.

WHEREFORE, defendant prays that the Complaint be dismissed with costs to him.

/s/ Clarence G. Pechacek

* * *

Attorney for Defendant

Defendant demands a trial by jury.

/s/ Clarence G. Pechacek

[Certificate of Service]

EXCERPTS FROM THE DEPOSITION OF
WILLIAM J. CASEY

1

Washington, D. C.
Thursday, June 23, 1960

* * * * *

Thereupon

2

WILLIAM J. CASEY

a witness of lawful age, was duly sworn by the notary public, and, being examined by counsel, testified as follows:

DIRECT EXAMINATION

BY MR. BERLOW:

Q. Would you state your full name for the record? A. William J. Casey.

5

* * * * *

Q. Was there an agreement dated July 15th that you entered into? A. Well, I can't recall the date, but the facts are that Mr. Edell pressed me to take this case, his case, and I was aware he had difficulty with his other lawyers and he came out to my home one Saturday and talked to me at great length and I agreed I'd go into it on the basis of a \$2500 retainer.

MR. DICKEY: Would you speak a little louder, please?

THE WITNESS: A \$2500 retainer plus 30 per cent of what I could save for him. And we did have an agreement along those lines which embodied the tax problem and the renegotiation problem. And then it occurred to me that I had to file the contingency agreement with the Internal Revenue Service under the rules and they wanted to see a

6

substantial retainer, so as not to confuse them, I recommended Mr. Edell that I was taking it on a quoted basis on his figures that we break it into two agreements: One, a straight 30 per cent on the renegotiation, and the other \$2500 plus 30 per cent of the saving on the tax. There was no requirement to file the renegotiation. I wanted to accept the retainer on the tax one. That is how there was a change, and we did change the agreement. There was a predecessor agreement

which superceded that. I don't have any copies of it.

* * * * *

9 Q. Knowing all of this that you testified, there did come a time when you negotiated this agreement with Mr. Edell which was finally reduced to the form of a written agreement for the first time in this document which has been marked Plaintiff's Exhibit No. 1?

A. Well, that is right. That was not for the first time. I explained there was a previous document which said the same thing but the renegotiation and income tax were in one document and they were separated.

Q. That first document, did you retain a copy of that? A. I don't think so. We called that agreement off and entered into a new one. And it was destroyed, I think. I think so.

Q. Have you made a search for copies of it? A. I looked through the files.

Q. And you have been unable to find it? A. Yes.

10 Q. The reason you stated for the alteration or destruction of the original agreement and entering into the new agreement was the original agreement contravened the rules of the Internal Revenue Department?

A. No; it didn't contravene the rules. It clouded up the judgment of the committee on practice as to whether an adequate retainer had been received on a tax matter and I thought it best to separate it.

Q. Insofar as your understanding with Mr. Edell was concerned, it was understood the \$2500 cash payment to you was a retainer both for the renegotiation case and the related Internal Revenue matter? A. I don't think that is the case at all.

Q. In your original discussion -- A. In the original discussion I had the \$2500 retainer, 30 per cent of the savings, and then I decided I wanted them separated. It didn't make any substantial difference in the terms of the agreement. We agreed they be separated. The original agreement was superceded by two separate agreements.

Q. At the very beginning it was understood the \$2500 was a retainer for both the matters? A. Yes; but that was superceded.

11 Q. I understand that is your testimony. Prior to its being superceded your attention was called to the rules of practice of the Internal Revenue Bureau at that time? A. Yes.

Q. After consulting those rules you then reduced it to the two separate agreements? A. I wanted the retainer to apply to the Internal Revenue matter. They like to have you take a substantial retainer, and not on a contingent basis. I thought coupling the thing clouded the relationship in terms of those rules.

Q. In what way did it cloud it? A. Because it wasn't clear what the retainer applied to. I said I had to have a substantial retainer if I was going to take the tax matter. I said, "I don't want to ask for more money. I will be willing to take the renegotiation without a retainer. But I want the retainer on the tax matter."

Q. And that was agreeable to Mr. Edell? A. Yes; it was.

Q. It was your view if the retainer was equally applicable to both the renegotiation matter and the tax matter it would be inadequate? A. No; it wasn't my view. I didn't know, but I felt it better to make it clear the retainer was applicable to the Internal Revenue matter.

Q. You thought there might be a likelihood someone might consider it inadequate if it was applicable to both? A. That's right.

12 Q. And that was explained to Mr. Edell? A. Yes; it was.

Q. And that was satisfactory to him? A. Yes. You see, it made no substantial difference.

Q. Do you recall in the first agreement a copy of which we do not have, whether reference was made to the Justice Department offer in their renegotiation matter? A. Yes; it was based on the Justice Department renegotiation matter.

Q. Do you recall in that agreement what figure was used? A. I don't recall.

Q. Do you know if it was \$138,000? A. I don't recall. I don't know.

MR. DICKEY: Wait a minute. He asked if you recall whether it was one or the other.

THE WITNESS: I don't recall what it was. I recall it was a figure which we understood to be the Justice Department offer. There were only two figures. I don't recall what it was. I imagine it was one or the other.

BY MR. BERLOW:

Q. It wasn't entirely different such as \$240,000? A. I don't know what it would be based on.

13 Q. It was either \$138,000 or \$139,000? A. Well, unless there was some other typographical matter. The intent was it would be the figure the Justice Department offered. That was the deal, and the agreements were prepared on that basis.

Q. When you speak of the Justice Department offer, are you speaking of the amount the Justice Department had proposed Mr. Edell was to pay in this renegotiation matter or the amount that the payment was to be based upon as being excess profits? A. I am talking about the amount the Justice Department set forth in the offer it made, the counter-offer it made to Mr. Pittman in response to his original offer of settlement and as referred to in the correspondence of Mr. Amann and in the papers, the schedules submitted by the Justice Department expressing the offer they would settle on the basis of excess of profits, of \$183,000.

Q. You are referring to the correspondence which is marked as what? You ought to look through there and tell me which of those exhibits are the ones you are referring to. A. I am referring to Paragraph 3 of Mr. Burger's letter to Pittman and Roberts. It says:

14 "We herewith propose a counter-offer under the terms of which the parties would agree to stipulate to the Tax Court that the partnership's excessive profits for the calendar years 1943, 1944, and 1945 were in the amounts of \$12,000, \$57,000 and \$114,000 respectively."

These numbers add up to \$183,000.

Q. And it was based on that letter, or other letters, or solely this letter? A. It was based on what we knew the Justice Department

had offered. It was expressed in that letter, expressed in subsequent schedules that had been prepared which Mr. Edell turned over to me or Mr. Amann turned over to me.

* * * * *

- 18 Q. After the agreement was executed then you wrote the letter of August 6th, which is marked Plaintiff's Exhibit No. 2 for identification, is that correct? A. Yes. I found out that that figure had been transposed or otherwise erroneously stated, \$138,000. I called Mr. Edell and told him about that and told him I'd have to make up a corrected agreement reflecting the Justice Department offer which was the basis under which we had discussed and entered into our understanding. I then checked in to see what had been the genesis of this other figure. Mr. Edell had the other figure. He seemed to think the figure \$138,000 had some relevancy. Then we sent him a corrected copy of the agreement with this letter explaining the difference. He subsequently came back and delivered the corrected agreement to me in my office executed
- 19 to supercede the original agreement which contained an erroneous figure.

Q. The agreements which you are referring to as being the corrected agreements are the ones attached to your complaint in this case? A. That is right.

Q. Now, there was a discussion as to the rules of the Internal Revenue Bureau? A. That preceded.

Q. The execution of the agreement marked as Plaintiff's Exhibit No. 1? A. Well, it preceded the agreement which carried the figure of \$138,000.

Q. And there was no further discussion as to that aspect of your fee agreement thereafter? A. Well, because we agreed to replace the original agreement with two agreements and it was in doing that that it came to our attention a mistake had been made in the figure. The figure was not the figure of the Justice Department's offer.

Q. Now there came a time when you supplemented the agreements

dated July 28, 1954; do you recall that? A. Yes; a couple of supplements.

20 Q. I show you this document dated August 17, 1954, and ask you if that is the first or second of the two supplements? A. Well, that is the first supplement.

Q. Do you have the second supplement? A. Yes; the second relates to interest.

* * * * *

Q. Now, referring specifically to the letter which is marked Defendant's Exhibit No. 1, I ask you to read the second paragraph which is marked with Arabic numeral 2, and tell me what conversation preceded the execution of that agreement in relation to that paragraph.

21 A. Well, there was a proposed settlement. Mr. Pittman had proposed a settlement. The Justice Department proposed another settlement. I proceeded to hold conversation the Justice Department and Renegotiation Board looking toward a more favorable settlement than the settlement I had taken as my starting point which was \$183,000. Mr. Edell apparently asked me to agree I would not make any further settlement without his approval.

Q. And you did agree to that? A. Yes; I did agree to that.

* * * * *

22 BY MR. BERLOW:

Q. The figure of \$183,000, the compromise figure, was any allowance made to your knowledge for expenses incurred to Mr. Edell? A. Yes; there was.

23 Q. What was that figure? A. I don't have it without going to the record, but it varied with each year. The proposal was made upon an amount they were willing to accept as expenses and an amount they were willing to accept as a gross income, and compensation to which Mr. Edell's services entitled him, and the settlement they offered was a composite of the three elements in that calculation the expenses were proposed to be, I think they proposed \$12,000 for one year, \$20,000 for another year, and \$25,000 for another year. What you are trying to

get at is whether at that time in their proposal they were willing to go along on more than \$14,000. The answer to that is yes, but Mr. Edell was not willing to take the settlement because the settlement was made up of a variety of things of which there was only one element. Do you want the exact figures on that?

Q. Yes; I do, if you have them. A. Well, I have them here.

Q. Take your time. A. The first year the estimated expenses were \$15,000, the second year they were \$20,000, and the third year they were \$25,000. But of course, allowing those expenses they came up with a total expense, a total excessive profits of \$183,000.

Q. In their figure in the proposed compromise, what was the other element you mentioned? A. The gross sales commissions. The breakdown of the commission between negotiable and unnegotiable business.

* * * * *

28

Q. On the Sokolow case, that was disposed of one way or the other by Mr. Benedict or yourself? A. Yes.

Q. Were you paid for that? A. Yes.

Q. Were you paid in full for that? A. I think so.

Q. There is no additional claim being made against Mr. Edell in connection with that matter at all, is there? A. Doesn't that question answer itself?

Q. Do you have any claim you intend to insert at some future time? A. I am not thinking of it now. You just brought the matter to my attention. I know Mr. Edell did pay me. He sent me a check of, I don't know if it was \$500, \$1,000, it might have been two \$500 checks.

Q. Did that represent compensation in full? A. I think so. You are raising the question now.

Q. I am asking you, do you have any intention of inserting a claim in connection with that matter? A. No.

* * * * *

38 Q. Then the case was set in Washington two weeks later. In that two weeks, did you interview any of the five witnesses we are talking about? A. I didn't interview any of them until the case was set in Washington.

* * * * *

50 Q. What did you, Mr. Casey, do in reference to '46 and '47? A. I didn't do anything in reference to '46 and '47 because we never had '46 and '47. We never had the returns and I was asked by Mr. Edell or one of his agents, the people were handling his tax returns currently, we had various conversations with the members of the firm and we bowed out of the '46 and '47 tax return. There was no claim for services at Mr. Edell's request or the request of his agent, and we confined ourselves to the tax adjustment for the years in which we had the renegotiation case.

* * * * *

55 Q. Now there came a time when you were requesting payment by Mr. Edell of the fee owed to you, that you sent calculations demonstrated by these savings effected by you. Isn't it a fact the entire savings effected by you resulted from the stipulation his expenses for the year in question were \$14,000? A. That is right. It resulted entirely from the fact we were able to get more expenses allowed by the Internal Revenue people than they were able to allow in the original deficiency. The other issue was whether they would recognize it before the partnership between Mr. Edell and his brother.

56 Q. In the original expenses the Internal Revenue made no allowances for the expenses? A. That is right.

Q. So the only saving resulted in the stipulation and in the renegotiation case? A. Unless you want to add a saving of 25 per cent fraud penalty.

Q. But no claim has been made for that in this case? A. No, but if we hadn't settled, they told us they were going to impose the fraud penalty.

Q. That is not the basis of your charge? A. No; but the basis is the agreement of 30 per cent between the savings and the amount actually paid.

Q. And you made no deduction for the fact you did not work in '46 and '47 other than the fact you made no charge for the savings, if any, effected in those years? A. This was a contingent agreement based on the years we worked on. We would have made more money if we insisted on handling the '46 and '47.

* * * * *

56-A

BY MR. BERLOW:

Q. Could you tell me how Mr. Edell paid to the Government with the result of renegotiation? Does this refresh your recollection it was approximately \$110,000? A. Let me see what that says. I know what it is intended to mean. The adjustment was made as set forth in my letter. Well, what that means is we would not claim credit for any tax, any reduction in the tax liability based on the profit which would be taken back by the renegotiation.

Q. And you explained that to him prior to the time the agreement was entered into? A. Oh, yes. That was all discussed.

Q. In other words, it was not that the amount paid in the renegotiation was to be deducted from the deficiency assessed? A. No.

Q. Do you recall what the deficiency assessed was? A. Yes.

Q. Does \$177,994.24 refresh your recollection? A. By the way, I would like to say that before calculation was made and sent to Mr. Edell on long sheets of paper and Mr. Williams and his associates spend some time up in our office and we went over the calculation and they informed us they agreed they were correct. Yes; the deficiency amount, the original deficiency came to \$177,994.24 according to these figures.

Q. What was the deficiency finally assessed? A. The deficiency finally assessed was, I think, I think it was \$14,000 for '43, \$21,000 for '44, and for some reason I haven't got the '45 figure here.

Q. Do you know what they are? A. I don't.

Q. I have it written down here on a piece of scratch paper. It was \$97,898 and my recollection is the last deficiency was in the sixties,

so if you had that added to the two you have just given -- A. Yes; that is right.

Q. If you subtract what he paid on the renegotiation which is \$111,000 -- A. Obviously, you don't do that.

Q. It is not obvious to me because it says the deficiency proposed by the United States Government will be reduced by any amount repaid to me as a result of any renegotiation. A. That money will be taken out of income for purposes of computing this thing. That was the agreement.

Q. So this language I read you is not clear on that point at all, is it? A. It is not clear. It doesn't seem to be clear.

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* * * * *

59

Q. Did you draw that agreement? A. I suppose so.

Q. Well, that is your office typewriter, I guess. A. Oh, I drew it. There is no question it was done in our office.

Q. Do you know whether or not Mr. Edell took this agreement to any other attorney to discuss it with him? A. I don't know.

60

Q. Did he ever say he done this? A. No.

Q. To your knowledge he was not represented by the other counsel at the time the agreement was executed? A. No.

Q. You were his only counsel? A. As far as I know.

Q. You were the only counsel as far as you know? A. Yes.

* * * * *

PRAECIPEUNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

the 20th day of November, 1962

WILLIAM J. CASEY,

Plaintiff

v.

HARRY EDELL,

Defendant

Civil Action No. 2788-59

The Clerk of said Court will enter the demand for jury trial
as withdrawn.

/s/ Ralph F. Berlow

* * *

CONSENT:

/s/ Harry Edell

Attorney for Defendant

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1

Washington, D.C.
November 20, 1962

The above-entitled matter came on for hearing before The
HONORABLE BURNITA SHELTON MATTHEWS, a United States
District Judge, at 10:00 A.M.

APPEARANCES:

For the Plaintiff:

Raymond R. Dickey, Esquire
Marshall E. Miller, Esquire

For the Defendant:

Ralph F. Berlow, Esquire

* * * * *

3 THE DEPUTY CLERK: The case of William J. Casey versus
Harry Edell, Civil Action No. 2788-59.

* * * * *

20 WILLIAM J. CASEY

having been called as a witness in his own behalf, and having been duly sworn, took the stand, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. Will you state to the Court your name, Mr. Casey?

A. William Casey.

Q. Where do you live? A. Roslyn Harbor, New York.

Q. Your profession is that of an attorney? A. Yes, it is.

21 Q. Will you tell the Court what your educational and professional qualifications consist of, including any publications or areas of special study? A. I graduated from Fordham University, Saint Johns Law School, and I was admitted to the Bar in the New York State in 1938. I have practiced law since 1938, except for three years during the war. I am a partner in a law firm in New York now. The name of our firm is Hall, Casey, Dickler, Howley & Brady and the law firm of Scrivener, Hall and Casey in Washington.

I have practiced primarily in the tax and financial and business matters. I have written various articles and books largely in the field of taxation and excess profits and renegotiation. I have lectured before many Bar Associations, universities, institutes, and again primarily in the field of taxation. Then I have practiced actively in those fields and have since 1938.

Q. Have you written a book, How to Handle Renegotiations, by William J. Casey, and C. Richard Gunther? A. Yes, I wrote that book with Mr. Gunther who is an accountant, he handled the accounting aspect and I handled the legal aspect. This was on the Korean War Renegotiation Act and was published sometime around 1952.

Q. Have you also published or been associated or worked with -- A. This is a set of legal arrangements with tax annotations which

22 I have prepared and keep up to date and publish. I have written them but they were published by an organization that publishes them.

Q. Have you also published or had published a book in your behalf by an institute for business planning of real estate investment program, by William J. Casey? A. Yes, I have written various things in the tax aspect of real estate and that is one of them.

Q. Mr. Casey, when did you first come into professional contact with the defendant, Mr. Edell? A. It was in December of 1953.

Q. Would you describe to the Court the circumstances and the situation as it existed at that time? A. Yes, I was asked to meet in Washington in the Law Offices of Danzansky and Dickey, a Washington firm of whom I have been called in as a consultant on several matters previously, to meet a man who had renegotiation and tax troubles.

When I went there, it turned out to be Mr. Harry E. Edell. Mr. Edell and Mr. Dickey were there and a gentleman named, I think it was McCormick, who I hadn't met before, was there. And Mr. Edell wanted to talk about his troubles with me.

Q. Did he talk to you about his troubles? A. Yes.

23 Q. Will you tell the Court what his troubles at that time consisted of? A. Mr. Edell told me that during the years of World War II he had been a manufacturer's representative or manufacturer's agent, representing a number of small companies who were desirous of getting war work and that he had acted for them on the basis of getting as his compensation a percentage of the sales, that they got out of his activities.

And at the end of World War II the World War Contracts Price Adjustment Board which administered the Renegotiation Act, had investigated his performance and had determined that he had received \$281,000 of excessive profits and had demanded that this money be returned to the United States Government.

This had occurred sometime in 1947. The Justice Department had moved to obtain a judgment against him in the amount of \$281,000, and in 1949 he had filed a petition with the United States Tax Court contesting this determination of excessive profits and this case had been pending since 1949.

He stated that he felt he wasn't getting anywhere with it, he felt he should not be subject to the Renegotiation law. He said this problem had upset his mind and his financial affairs and that he had posted, in order to stop the United States Government from moving against him, he had posted about a quarter of a million dollars worth

24 of securities in escrow with the American Security and Trust Company in Washington. And this money was to secure the amount which the United States Government claimed from him, and he was incurring interest charges on the liability and he was going through a divorce proceeding at the time when this was tying up his property.

In fact his property was tied up and made it difficult for him to work out his divorce. He had just had a lot of problems and I asked him whether he was represented by counsel and he said he had been represented by a firm in Washington known as Pittman and Roberts, and that he had subsequently also called in a firm in New York called Lowenstein, Pitchard, Amann and Parr. And I knew the Pittman and Roberts firm by reputation and I said that is a good law firm. I knew Mr. Amann of the Lowenstein firm in New York and I told him I thought he was in good hands. And he went on to say nevertheless he had understood that I was an expert in renegotiation business and tax business and that he would like to have me take a look at his situation to see if I had any advice as to how it might be brought to a conclusion more expeditiously.

Q. This is still now your first conversation with Mr. Edell in 1950 -- A. This is in 1953.

25 Q. 1953. A. 1953, December.

Q. 1953 December ? A. Yes.

Q. This was the first conference with Mr. Edell? I will ask you whether or not there was any discussion of claims by the Internal Revenue for income tax? A. Yes.

Q. Well, how did he describe it or relate it? A. Yes, this is part of the picture. In addition to the \$281,000 excessive profit that the Government claimed, the Government had his tax returns for the years 43, 44, 45, and some subsequent years -- 46 and 47, under review and they were claiming additional taxes from him of some \$200,000, and the tax problem and the renegotiation problems were closely entwined.

Q. Would you tell us how they were entwined? A. Well they were entwined because if the Government succeeded in recovering excessive profits that would reduce his income for those years and produce an automatic reduction of his income tax liability.

And also because somewhat the same issues were involved, the question of his ability to substantiate the expenses he claimed that were involved in both the tax case and the renegotiation case.

26 Q. Will you explain to me now if in the renegotiation case it were found he had excessive profits what would he be required to do with the profits determined to be excessive? What would he have to do with that sum of money? A. He would have to pay that back to the United States Government and they would give him a credit for the income tax and the amount he paid back on the renegotiation.

Q. In other words, he would have paid income tax on a higher sum which he claimed as income which would be reduced if he had to repay a portion of the excessive profits? A. Yes.

Q. So then it would be a matter of computation only on that aspect? A. That didn't go to the liability. That goes to the adjustment. The Government would give him back some of the money; they would accept the liability by repaying him some of the money he paid in taxes.

Q. Will you tell us what next occurred after your first conversation with Mr. Edell, if you have covered that conversation fully? A. Yes, that is about it. I went back to New York and then the following,

sometime yearly in 1954, Mr. Dickey sent me some papers dealing with Mr. Edell's problems which in a letter he told me Mr. Edell had left with him and had asked him to send on to me.

27 Q. What did those papers in a general way consist of? A. Well I really can't tell exactly; I don't remember exactly. They were, I guess, correspondence, and papers that had been prepared to show what the Department of Justice and what were the facts of his war time experience. The papers calculated to give me on paper a picture of the case in which Mr. Edell was involved.

Q. Had you at that time accepted employment as counsel for Mr. Edell? A. No, I had not formally accepted employment as counsel and I helped, tried to help Mr. Edell on a rather informal basis for some time before I accepted employment as his counsel.

The next thing I did Mr. Edell had asked me -- I told Mr. Edell I couldn't advise him at all unless I sat down and talked with Mr. Amann who was on the firing line, who handled the case. And I didn't want to do that unless Mr. Amann wanted me to do it and it was in that state.

Some time in the early part of 1954 Mr. Edell arranged for me to meet with Mr. Amann and I had a meeting with Mr. Amann in New York. At that meeting Mr. Amann described the situation, described --

MR. BERLOW: Your Honor please, I would object to what Mr. Amann said as being hearsay and it should be excluded.

* * * * *

28 THE COURT: Was Mr. Edell present?

THE WITNESS: On one occasion Mr. Edell was there, on the first occasion he wasn't. I am not going to describe what Mr. Amann said really. I think Mr. Amann talked to me, that is how I got my understanding of the case and that is the next step and that is how I proceeded.

THE COURT: The witness may tell us anything that was said while Mr. Edell was present.

MR. MILLER: I do not think it is important here, Your Honor, but it might be later. This attorney was handling the matter for Mr. Edell, the client. Mr. Edell had at that time another attorney, Mr. Amann, and it seems to me the suit being for attorney's fees and services done, part of it could well be conversation he had outside of Mr. Edell's presence with his other attorneys. It goes to the merits here. It is not under the hearsay rule.

THE COURT: You went there at Mr. Edell's request, did you?

THE WITNESS: Yes, I did.

* * * * *

29 THE COURT: I will overrule the objection, but, of course, any questions asked should be kept within the scope of the authority of the New York law.

MR. MILLER: Yes.

BY MR. MILLER:

Q. What was the approximate date now we were discussing when you had a conference with Mr. Amann? A. It was sometime in March 1954.

Q. March, 1954? A. Yes.

Q. Prior to that had you had any conversation with Mr. Edell about getting together with Mr. Amann? A. Yes.

Q. About what was the date of this conversation with Mr. Edell about that? A. I told Mr. Edell in December.

Q. What was the date, approximately in 1953? A. In December -- the last week or two around Christmas of 53, somewhere in there before or after Christmas and then Mr. Edell came to my office in New York, he would write me letters and telephone me --

Q. My question is this. What directions, if any, did Mr. Edell give you about conferring with Mr. Amann and for what purpose?

30 A. Mr. Edell said he wanted me to look at his problems and said if I would advise him as to how they might be brought to a satisfactory conclusion more expeditiously.

I told him that I couldn't do that without talking to his lawyer and I was unwilling unless his lawyer wanted me to do it and asked me to do it.

And Mr. Edell kept talking to me about his problems and I told him I couldn't do anything and I didn't want to get involved, I didn't want to advise or do anything unless Mr. Amann asked me to and I couldn't do it effectively without learning from Mr. Amann where the matter stood and what his plans were and so on.

Q. What did Mr. Edell say to that? A. He said he wanted to arrange for me to meet with Mr. Amann. Mr. Amann subsequently called me up and asked for a meeting which he said Mr. Edell had asked him to do.

Q. Now I am going to ask you to tell the Court what your conversation was with Mr. Amann, keeping it at all times, including this conversation confined to any authority or direction you and Mr. Amann had from Mr. Edell for this purpose. A. Mr. Amann and I discussed the case. Mr. Amann told me how he evaluated the case and what he was trying to do about it. He told me he was engaged in settlement discussions with the Department of Justice.

31 He discussed the points of law involved in the case, and the difficulties of proving Mr. Edell's expenses and the various other things that were the factual items that were involved in the case.

Also at the same time Mr. Edell talked to me about a problem he had in releasing, getting a release of the proceeds of the sale of real estate which were tied up by the lien of the judgment which the Government had taken against him. And I discussed that with Mr. Amann and suggested a course of procedure to him as to how this \$42,000, which was owing to Mr. Edell from the sale of real estate, in which he had an interest, might be released to him.

He was anxious to get his hands on that money and I discussed that with Mr. Amann and Mr. Benedict in my office did some work on that with Mr. Amann during March, April and May of 1954.

Q. What did Mr. Amann tell you was the position of the Department of Justice regarding the problems of Mr. Edell?

A. He told me that the Department of Justice had rejected an offer of settlement which Pittman and Roberts had made.

MR. MILLER: Just a minute there is an objection.

MR. BERLOW: Your Honor, this is assuming what Mr. Amann says is not hearsay, what the Department of Justice told Mr. Amann is hearsay. I think there are documents and records which would perhaps -- the plaintiff's counsel just handed me a document which may
32 take care of it. There are documents showing what the Justice Department said and I think they should be offered in evidence rather than hearsay on them.

THE COURT: Of course, it is hearsay but hearsay is included in the conversations between the plaintiff and the attorney for the defendant and the attorney to which the defendant had referred the witness. It may go in.

THE DEPUTY CLERK: Plaintiff's Exhibit 1 for identification.
(Document marked for identification).

BY MR. MILLER:

Q. Mr. Casey, I am going to hand you a copy of a letter dated December 7, 1953 from Mr. Douglas M. Amann, the New York attorney to Mr. Warren Burger, Assistant Attorney General, Civil Division, Department of Justice, Washington 25, D.C., and ask you if this was among the documents that were discussed by you and Mr. Amann in the conversation that you are describing? A. Yes, it does. It is, and Mr. Amann showed me this document and we discussed it.

Q. Will you tell the Court what portion or what information from that letter to Mr. Burger was discussed by you and Mr. Amann?

A. He told me that Mr. Burger, the then Assistant Attorney General, had written him a letter offering to reject the offer to settle the matter
33 for \$42,000 which Mr. Edell's previous counsel, Pittman and Roberts, had submitted.

Q. Had settled what matter for \$42,000? A. The renegotiation. They proposed they would accept a finding of about \$42,000 of excess profits.

Q. \$42,000 excessive profits had been offered, tendered by Mr. Edell's counsel to the Government? A. Yes. And the Government had rejected that offer and came back with a counter offer saying that would dispose of the matter on the basis of reducing the excess profits chargeable against Mr. Edell from \$281,000 to \$183,000.

Q. \$183,000? A. Yes, as this letter states.

Q. Well, does the letter state that it is not clear to me in view of the statement in your letter, and this is a quotation from Mr. Burger's letter.

"In arriving at a proposed counter offer totalling \$183,000, the amount of expenses to be allowed to Mr. Edell as well as the profits which the partnership would retain after renegotiation are substantially in agreement with the total figures set forth in your letter of November 12, 1952."

34 Mr. Amann said he would like to make an appointment to speak with Mr. Prentice regarding the computations to form the basis for the \$143,000 mentioned in his letter.

MR. MILLER: I would like to offer this letter in evidence. It was shown, Mr. Berlow, I believe at pre-trial.

MR. BERLOW: I have no objection.

MR. MILLER: May I hand it up to the Court?

THE COURT: Plaintiff's Exhibit 1 for identification in evidence. (Document admitted in evidence).

THE DEPUTY CLERK: Plaintiff's Exhibit 2 marked for identification.

BY MR. MILLER:

Q. Mr. Casey, I will hand you plaintiff's Exhibit 2, which is a copy of a letter from Mr. Warren E. Burger, Assistant Attorney General, Civil Division to Pittman and Roberts, attorneys, Washington, D.C., dated December 2, 1953.

Will you examine it and tell the Court whether you discussed that document with Mr. Amann in this conversation? A. Yes, I did discuss this document with Mr. Amann and with Mr. Edell.

Q. What was said? A. What discussion was had?

Q. What did you say to him about it and what does the document say? A. The document is a letter signed by Mr. Burger, Assistant Attorney General, of the Civil Division by Mr. Hickey, Chief of the General Litigation Section, and it says on November 23, 1953, the

35 Attorney General authorized the rejection of Mr. Edell's offer totalling \$42,109.00 and authorized the proposal of a counter offer totalling \$183,000 for the three fiscal periods.

"You are hereby notified that Mr. Edell's offer has been and is hereby rejected.

"We herewith propose a counter offer under the terms of which the parties would agree to stipulate to the Tax Court that the partnership's excessive profits for the calendar years 1943, 1944, and 1945 were in the amounts of \$12,000, \$57,000, and \$114,000, respectively."

Q. What do those figures, by the way, total? A. They total \$183,000.

MR. MILLER: I offer into evidence Plaintiff's Exhibit 2 which has been exhibited to counsel.

THE WITNESS: It also goes on to talk about the way they discount the authorities on the basis on which it argues Mr. Edell was not subject to renegotiation at all. They don't place much weight on that, I might say.

MR. MILLER: I offer into evidence Plaintiff's Exhibit 2.

MR. BERLOW: I have no objection to 2.

THE COURT: Plaintiff's Exhibit 2 is admitted. (Plaintiff's Exhibit 2 for identification admitted into evidence).

36

THE DEPUTY CLERK: Plaintiff's Exhibit 3 marked for identification.

BY MR. MILLER:

Q. Mr. Casey, I will show you a copy of a letter from Mr. Amann to Mr. Edell dated February 1, 1954 with enclosure showing computations of seven pages and ask if that was discussed by you and Mr. Amann? A. Yes, it was.

Q. Can you tell us what it is please and what discussion you had? A. It is a letter to Mr. Edell in which Mr. Amann says he tried to estimate what Mr. Edell would have to pay on the basis of the Justice Department's offer to reduce the excessive profits chargeable against Mr. Edell to \$183,000 after some computations were made to give Mr. Edell credit, or permit him to make payment of \$183,000, partially in the form of a tax credit, a credit for taxes he had paid on that money.

There are attached six pages of calculations which Mr. Amann says is the best estimate he could make as to what the ultimate cash payment is that might be requested.

Q. What was the date of that letter? A. February 1, 1954.

Q. Is there a recapitulation as to the lowest offer made by the United States Government and the amount that Mr. Edell would have to pay after computation of the tax credit on the last page?

37 A. Yes, it says that the excessive profits would be \$183,000, which was the offer of the Justice Department and that is reduced by a tax credit of \$71,000, \$71,104.03.

Q. Upon the settlement offer of \$183,000 excessive profits, what would be the amount then Mr. Edell would owe after computation of tax credits? A. That would be \$111,895.97 to which then is added interest.

Q. Well what would be the corrected figure from \$183,000 after indicating, taking into consideration interest and tax credit?

A. \$137,000.

Q. \$137,000 even? A. \$526,60.

Q. I am sorry, would you read that last figure again?

A. \$137,526.60.

MR. MILLER: I will offer Plaintiff's 3, is that?

THE WITNESS: It is marked 3, yes, sir.

MR. MILLER: Plaintiff's 3.

THE COURT: Plaintiff's 3 for identification is admitted.

38

(Plaintiff's Exhibit 3 for identification is admitted in evidence).

BY MR. MILLER:

Q. Mr. Casey, have you told us fully now your conversation with Mr. Amann and the information you derived as to the lowest or best offer of the settlement made by the United States? If not, if there is any further conversation you may relate it. A. Well, in May of 1954 Mr. Edell had asked me and Mr. Amann to come to Washington to meet him for the purpose of discussing this offer and what ought to be done about it.

Actually, I was in Washington on another matter and he asked Mr. Amann to come down, which he did, so he could discuss the whole problem with the three of us. And on that occasion we discussed amongst the three of us, the Justice Department's offer and the chances of doing better than that if we had to go to Court.

And we discussed the chances of getting a Court determination and Mr. Edell would not be subject to renegotiation at all.

Q. On what theory would that have been attempted? A. Well, there was one or two decisions involving manufacturer's agents. The Fine Case and the Wolff Case, decided by the Tax Court under a prior law, the law had been changed to more explicitly, with an attempt to more explicitly, of making the law applicable to manufacturer's

39

agents, and the general legal theory was if there could be established Mr. Edell did not solicit business for his customers, the companies he was representing, that he really rendered management service and that he wasn't really trying to solicit business, that there would be an argument he was not subject to renegotiation.

Q. What Renegotiation Act, what area of the activities of the Renegotiation Act was Mr. Edell seeking to escape? A. Well it covered defense contractors. It covered all people doing business with the Government during the war.

Q. How would Mr. Edell as a manufacturer's representative, or whatever he called himself, would he be considered to be a contractor?

A. Because the law was explicitly applicable to manufacturer's representatives.

Q. As sub-contractors? A. Yes, it applied to contractors and sub-contractors, yes, engaged in defense work -- both contractors and sub-contractors and if we could establish that Mr. Edell did purely management work and wasn't soliciting contracts, then there was some chance of getting a determination that he was not subject to renegotiation at all. And Mr. Edell was very desirous of maximum efforts being made to establish that position.

40 And Mr. Amann, who was inclined to think it wouldn't be possible to do much better in Court than the Justice Department had offered.

Q. What offer? A. \$183,000 because of the great difficulties of proving anything about Mr. Edell's business.

His accountant had died and lost all of his books. There were no records. The records were in very bad shape. Any nobody thought very much of this theory that he wasn't eliciting contracts and everybody thought that would be very difficult to establish. But Mr. Edell staunchly contended that was the case and continued to up until we went to the Tax Court.

Q. Was there anything further in this conference in May 1954 among yourself, Mr. Edell, and Mr. Amann? A. No. There was nothing further until Mr. Amann undertook to go back and talk to the Justice Department to see if he could get them to approve the settlement.

Q. Up to this date had you been retained as counsel? A. No, this was all informal without any arrangement at all.

Q. What next transpired in your relationship professionally with Mr. Edell? A. Well, Mr. Benedict in my office continued to work
41 with Mr. Amann trying to get the proceeds of this real estate sale.

Q. Pardon me, but I am not clear in my mind, what was that? What was the proceeds of the real estate? Can you explain it briefly?

A. Mr. Edell was a partner in a venture which he had purchased some real estate in New York City.

MR. BERLOW: Your Honor, this is the matter I referred to in my opening. I object to this, there is no claim for any services in connection with this matter and it is entirely irrelevant.

THE WITNESS: Could I say something?

MR. MILLER: It is true no claim is made but I am going through this briefly to show the relationship between the parties which lead up to the contract which they are hotly disputing.

THE WITNESS: No, I think my retainer, my retainer of \$2500 was applicable to this work.

THE COURT: Which retainer?

THE WITNESS: The retainer I ultimately arrived at reflected the work I had done for Mr. Edell up to the time I had made formal agreement as well as the work I was to do for him.

42 MR. MILLER: There is some contention at some point that the \$2500 retainer which was agreed upon, was intended to cover expenses. This is controverted and for that reason I am briefly going to show that this and the other work was supposed to be included within that \$2500 retainer. I won't take long, Your Honor please.

BY MR. MILLER:

Q. Briefly, would you describe that? A. Mr. Edell was a partner in this real estate venture and in either the acquisition or a sale of this real estate they had run into title problems because the title company had discovered that the United States Government had a judgment of \$281,000 against Mr. Edell.

And in order to clear this cloud on the title -- it was Mr. Socklow, who had apparently represented the real estate syndicate, and he recommended that he and Mr. Amann, Mr. Edell and various lawyers together work out some arrangement under which they put some \$250,000 worth of securities in escrow with the American Security Bank and Trust Company, for the purpose of -- against a stipulation of the Government in consideration of this escrow they would not proceed on other civil means that they had to collect this money.

Q. To collect what money? A. The money he owed to renegotiation.

43 Q. The excessive profits? A. Yes, and when this real estate was sold and Mr. Edell's share of \$42,000 was to be paid to him as his share of the proceeds, the Department of Justice took the position that it had a lien on the \$42,000 and was entitled to place that \$42,000 in escrow.

And Mr. Socklow, who was the escrow agent refused to pay the money to Mr. Edell and with Mr. Amann we finally went to Judge Kaufman, a District Court Judge in the Southern District of New York. Mr. Benedict appeared in Court and got an order from Judge Kaufman that these funds were not necessary to protect the Government and the Government had agreed in consideration of the original escrow, the \$250,000 worth of securities, that that would secure them so the proceeds of the real estate's sale, Mr. Edell's share, needn't be held up, or couldn't be held in escrow by the Government.

Q. Who was Mr. Benedict, and under whose direction was he acting? A. Mr. Benedict was an attorney in my office and he was an employee of mine and he was acting under my direction.

Q. At that time, this was what, May 1954? A. This overlapped. It started some time in March or April and continued over into September or October.

44 Q. Who else was employed by you in your office and acting under your direction under any of the matters relating to Mr. Edell? A. Mr. Edward Brady.

Q. And was all of this Mr. Benedict's, Mr. Brady's, and yourself's action so far prior to entering into a contract for fees in controversial matters? A. Thus far yes. I wanted to complete the real estate transaction. After the funds were released from the lien of the United States Government, Mr. Socklow refused to give them to Mr. Edell because he asserted an attorney's lien against the funds and I had to negotiate with Mr. Socklow to get the \$42,000 for Mr. Edell.

And finally we agreed to pay Mr. Socklow \$1,250 for his legal fees for services. He kept that out of the \$42,000 and gave Mr. Edell the balance.

Q. And this was finally concluded? A. Some time in September or October of 1954. Well it started, as I said, in March or April and we went to Judge Kaufman some time in April or May.

Q. All right, what further efforts did you make in Mr. Edell's behalf? A. Well, I had never -- in June, some time in the latter part of June I received a copy of a letter which Mr. Edell had sent, with a copy of a letter addressed to Mr. Amann, which stated that he had read
45 his inconclusive correspondence.

Mr. Amann had apparently written Mr. Edell a letter about the status of the matter. Mr. Edell said he read your inconclusive correspondence about the matter. I don't want you to do anything more in the case until I come to New York.

A copy of that letter arrived in my office in June. Then in July on a Saturday Mr. Edell called to say he had to see me and could he come to my house which he did.

He came out to my house on Long Island and we spent several hours discussing his affairs. He told me that this matter was preying on his mind, that he couldn't attend to his other business, and that it was undermining his health and he asked me if I please wouldn't undertake to handle the matter for him.

He said he had decided whether I agreed or not that he was going to get other counsel; that he was going to terminate his relationship with Mr. Amann.

I was reluctant to take it on. I told him so. When I finally told him I would only take it if Mr. Amann asked me to and if Mr. Amann were satisfied with the state of the thing and thought it ought to be turned over to me or somebody else.

Then Mr. Edell discussed the matter of a fee arrangement with me. He said he had paid some \$15,000 for lawyer's fees and nothing

46 had happened, his case was no further advanced than when he started and he didn't want to get into another situation where he would have to pay fees, independent of the results obtained, and he wanted me to take the case on the basis where my compensation would depend upon the degree to which he would reduce -- to which my efforts succeeded in reducing the amount of excessive profits which the Government claimed to be due them below the best offer which the Justice Department had made, \$183,000, and on the basis --

MR. BERLOW: Your Honor please, I object at this time to any conversation explanatory of the written contracts which haven't been offered in evidence but which are appended to the pleadings, on the ground that such explanation would be in violation of the parole evidence rule and consequently inadmissible. If they are relying on a written contract, the contract must speak for itself. That any parole evidence or oral testimony as to what the contract means, or its interpretation, should be excluded at this time.

MR. MILLER: The Court please, I think Mr. Berlow in his opening statement read to Your Honor a portion, he didn't read the whole sentence unfortunately, from one of these agreements, whereby he, himself, contends it is not clear as to what it means and I think there was continuing feeling because of certain factors which arose whereby an original contract was then rewritten in two parts, there was a

47 typographical error that Mr. Berlow mentioned and so forth

which would solely and clearly necessitate evidence as to the discussion of the parties both then and at the time the changes were made.

In order to get the whole contract which consists not only of the written but of the one case, a typographical error and the other, the reasons for certain changes, so Your Honor may construe the language.

THE COURT: The objection is overruled.

MR. MILLER: You may continue, Mr. Casey.

THE WITNESS: I explained to Mr. Edell that I didn't customarily take matters of this kind on a contingent basis but he urged strongly that I make an exception in his case and I agreed to do so.

I explained to him I had already done quite a bit of work for which we hadn't been compensated and we would have to do a lot of additional work, to study the case, and I had asked that some kind of a retainer which I agreed to make as small as I could, in order to justify bringing the case into the office and to justify the work I had done so far.

And I agreed to take a \$2500 retainer which would be applicable against the 30% of the difference between the best offer the Department of Justice had made as to the excessive profits Mr. Edell had earned

48 and the amount of excessive profits that we finally determined to be due from him, whether by settlement from the Government or by determination of the Court, plus 30% of the savings that might be an effected reduction of additional tax liability ultimately determined to be due from him and the amount of tax liability which the Government was then asserting against him.

And I explained to him in making that calculation we would eliminate from his income the amount which the Government determined to be excessive profits. I would take that out and wouldn't ask for that amount because that would be an automatic reduction in his income tax liability. And that was the understanding we arrived at.

Then I explained that he would have to settle his obligation to Mr. Amann and Mr. Amann would have to agree to turn the case over to me. He would have to ask me to take it.

During the next week I heard from Mr. Amann, who called me and told me he had talked to Mr. Edell and that Mr. Edell had told him he wanted me to handle the case from thereon, and that he was happy to get out of it, and as soon as he collected what Mr. Edell owed him he would be glad to send me the papers and to withdraw his appearance before the Tax Court, and take the other steps necessary to turn the case over to me.

49 Then --

Q. (By Mr. Miller): Pardon me, were you shown some correspondence from Mr. Amann to Mr. Edell dated July 21, 1954 about the termination of their relationship? A. Can I see it? I think it was --

MR. MILLER: I will have it marked.

THE DEPUTY CLERK: Plaintiff's Exhibit 4 for identification.
(Document marked for identification).

MR. MILLER: Plaintiff's 4 being a letter dated July 21, 1954.

Q. (By Mr. Miller): I will hand you plaintiff's Exhibit 4 for identification and ask you if you have seen that and what discussion, if any, you had concerning it.

MR. BERLOW: Your Honor, I would object to that. This is a letter from Mr. Amann in which he goes into great detail as to his relationship with Mr. Edell, which is not relevant in this case and which would open up a collateral issue which I think would unduly prolong this trial.

THE COURT: What is the purpose of this?

MR. MILLER: It bears upon the testimony just given as to the assistance of Mr. Casey that payment be made and the records be turned over from Mr. Amann to him before he would enter into an attorney-client relationship.

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THE COURT: I do not think that Mr. Berlow is disputing that, are you?

MR. BERLOW: No, I agree Mr. Amann was paid and the papers were turned over to Mr. Casey.

MR. MILLER: That isn't exactly what that letter says. He wasn't paid and he had a great deal of difficulty getting payment and Mr. Casey had difficulty in getting the file. It is part of the whole story, of the difficulties he had and the efforts he put forth on behalf of this client. It is not only Mr. Amann but other attorneys in two counts. I am offering it only to show the efforts rendered by him and the difficulties of the relationship which bears on the nature of this agreement.

THE COURT: This is a letter from Mr. Amann to Mr. Edell?

MR. MILLER: Mr. Amann to Mr. Edell.

THE COURT: Well where did you get it from?

THE WITNESS: Mr. Edell showed it to me and gave me a copy.

THE COURT: Well, I will overrule the objection.

MR. MILLER: You may proceed with your answer.

THE WITNESS: Mr. Edell showed me this letter which is dated July 21, 1954, shortly, a few days after its date before I entered into a formal agreement with him, a written agreement with him.

51

MR. MILLER: I will offer it in evidence and ask leave to hand it up to the Court.

MR. BERLOW: I object to this, Your Honor.

THE COURT: Admitted. (Plaintiff's exhibit 4 admitted in evidence).

THE DEPUTY CLERK: Plaintiff's Exhibit 5, 6, 7, 8 and 9 marked for identification. (Documents marked for identification).

MR. MILLER: For the record may we show a letter dated August 6, 1954 to Mr. Edell from Mr. Casey, the first page of the letter is marked Plaintiff's 7, and the second page Exhibit 8, so in effect it constitutes one exhibit but it has already been marked.

THE COURT: What is that Exhibit number?

MR. MILLER: It is numbers 7 and 8, though it is one letter.

BY MR. MILLER:

Q. Mr. Casey, I will hand you Plaintiff's Exhibit 5, and 6 and ask you to identify those documents please? A. Well, Exhibit 5 is a letter agreement signed by Mr. Edell and by myself in which I stated in my compensation is to be 30% of the difference between what the Department of Justice offered or \$138,000 and the final settlement of
52 the dispute, and the \$138,000 is crossed out and in the margin there is in pencil \$183,000.

MR. BERLOW: Your Honor, I don't want to repeat this objection. I have objected once on any oral testimony as to these documents. So I won't be having to object, may I have a running objection as to any testimony to these documents, so I won't be having to repeat my objection.

THE COURT: Do you mean you are objecting to Plaintiff's Exhibit 5, 6, 7, 8 and 9, including 7a?

MR. BERLOW: I have no objection to admission of these.

THE COURT: You are objecting to his testimony, is that it?

MR. BERLOW: I am objecting to his testimony and the explanation of the written contract on which he relies.

MR. MILLER: We have no objection to a continuing objection if it will save the Court time.

MR. BERLOW: No, but to further save the Court's time I have no objection to the admission of 5, 6, 7 and 8.

THE WITNESS: You asked me to describe it. I am describing what is on the paper.

THE COURT: I wonder if you need to have him to go into the matter of any papers on which there is no objection?

MR. MILLER: There is a continuing objection.

53 THE COURT: The objection is not to the papers it is to the --

MR. MILLER: To the explanation. But I need the explanation in order that the Court may understand why it appears \$183,000 in the body or in the margin and \$138,000 or vice versa.

THE COURT: Very well, I will overrule the objection.

BY MR. MILLER:

Q. Will you explain to the Court briefly why in the body the figures of \$138 and in the margin \$183. A. There was a mistake in the preparation of the papers and when it was called to my attention by somebody, it is not my writing, somebody crossed out 138 and wrote 183 in the margin. The two figures were transposed.

Q. What should the figure be in terms of your agreement with Mr. Edell? A. Well it says here between the Justice Department offer which was 183 and that is what we agreed. The Justice Department's offer.

Q. Did you subsequently call this typographical error or the transposition of 183 and 138 to Mr. Edell's attention? A. Yes I did.

Q. When and how? A. I called Mr. Edell on the telephone and I told him there seemed to have been a mistake in the preparation of the agreement about the terms on which I was to handle the renegotiation
54 matter, and the understanding was if it was \$183,000, the amount the Justice Department had offered, and Mr. Edell said that --

THE COURT: Just a minute. Do I understand that he is still talking about Plaintiff's 5 for identification?

MR. MILLER: Yes, Your Honor, Plaintiff's Exhibit 5 has the transposition which he is now telling conversation about and then I will introduce another written document which I will ask him to refer to.

THE COURT: Well, did I understand him correctly to say that is the letter agreement? What figure did it have in there when it was signed?

MR. MILLER: The original. Might I hand this up to Your Honor?

BY MR. MILLER:

Q. What did you and Mr. Edell say then concerning the \$138,000 figure that is contained in Plaintiff's 5 for identification. A. I told him a mistake had been made in the preparation of the papers that would have to be corrected and I would send him the correction.

And he said to send him the correction, that he thought somehow that he had been told somewhere along the line he would have only to
55 pay \$138,000 or 130 and some odd figure in the thousands of dollars.

I thereupon had a corrected copy of the agreement made and I sent it to him with a letter describing how he had gotten the \$130,000 figure in his mind.

Q. How had he gotten that in his mind? A. That was the figure Mr. Amann had estimated he would have to pay including taxes and interest that \$137,500 and some odd dollars and sixty cent figure.

Q. Is that the figure which appears in Plaintiff's Exhibit 3 being in the amount of \$137,526.60? A. Yes.

Q. And does that represent the renegotiation cost to Mr. Edell as the result of the settlement at \$183,000 with the allowance of tax credit and provision for interest? A. Yes.

Q. You say then you wrote as well as having discussed this transposition error with Mr. Edell? A. Yes, I did.

Q. And I will ask you if Plaintiff's Exhibit 7 was your further correspondence on that subject. 7 and 8 since that is the letter explaining those pages? A. Yes, the two letters explaining the mistake and explaining how the retainer was to work and describing the
56 corrected agreement which was enclosed. There was enclosed two copies of it.

Q. I will ask you in Plaintiff's 9, the new agreement, correcting the figure to \$183,000 was the lowest settlement offer of the Justice Department? A. Yes, it is.

Q. Would you have represented Mr. Edell or done any work in his behalf, had he not agreed with you to correct the error and execute the corrected fee agreement which had the correct amount in it?

A. No, I wouldn't have.

MR. BERLOW: I think this is a little argumentive and leading, Your Honor, and it can't call for an answer that is evidence.

THE COURT: The objection is sustained.

MR. MILLER: I will offer into evidence Plaintiff's Exhibit 7, 8, 9, and 6, if they are not already offered. I guess 5 has been.

THE COURT: Plaintiff's 5 is admitted, 6 and 9 Mr. Clerk.

THE DEPUTY CLERK: Plaintiff's 8, the exhibit number is eradicated.

THE COURT: Plaintiff's 7 is admitted. The Clerk marked Plaintiff's Exhibit 8 on the second page of 7 it has now been eliminated.

57 (Plaintiff's 6, 7, and 9 admitted in evidence).

MR. MILLER: Thank you, Your Honor. In other words, Exhibits 7 and 8 have been consolidated into Plaintiff's 7 is that correct?

THE COURT: Yes.

BY MR. MILLER:

Q. Following your conclusionary agreement of your work in August 1954, that you have described, Mr. Edell and you straightened out the amount and so on, tell the Court what you did, what his problems were and what happened? A. Mr. Edell came in and signed the corrected agreement. I then filed the agreement with the Committee on Practices of the Treasury Department.

Q. When you say corrected agreement, what agreement are you referring to? A. The agreement, the tax agreement which was broken into two agreements, the arrangement was reflected by two agreements. The tax agreement was corrected and was executed and had a date of July 28th and the corrected renegotiation agreement bore a date of August 6.

This is what I mean when I say corrected renegotiation agreement, the two agreements were filed with the Committee on Practices.

58

Q. Was the agreement with reference to income tax that is shown in Plaintiff's 6? A. Yes.

Q. This and the corrected renegotiation agreement were filed with whom? A. The Committee on Practices in the Treasury Department.

Q. What happened then? A. Well, Mr. Edell paid me \$1,000 in August and \$1,000 in September, and \$500.00 in October in accordance with the agreements, and gave me the \$2500 retainer which we had agreed upon.

THE COURT: You mean he paid you \$5,500 in all?

THE WITNESS: Oh no, I didn't say he paid me anything when he signed the agreement.

THE COURT: I understood you, did you say a thousand in August a thousand in December and a thousand in October? Is that correct or incorrect?

THE WITNESS: I said a thousand in August, a thousand in September, and 500 in October.

BY MR. MILLER:

Q. Of what year? A. All in 1954. And that was all of the \$2500 retainer. Nothing was paid when the agreement was signed.

Q. What was the position of the Internal Revenue Department with reference to contingent fee contracts and retainer agreements at that time? A. The Internal Revenue Department permits --

59 Q. Permitted as of that date? A. They permitted contingent fees provided there is a retainer and provided the retainer is in reasonable relation to the amount of the possible compensation arising from the contingent feature of the arrangement.

And since we had agreed that Mr. Edell would pay me a \$2500 retainer, I thought it best to write that into the tax agreement, and not to take a retainer, to take the renegotiation agreement on a pure contingency basis, because in renegotiation there was no requirement as to retainers.

Q. Did you discuss that with Mr. Edell? A. Yes, I did. I told Mr. Edell I thought it was for that reason, I thought we ought to have our arrangement reflected by two agreements, one for the renegotiation and one for the tax.

Q. When did you have a discussion with Mr. Edell, approximately?

A. Well, shortly after the Saturday he came to my house and when we arrived at the broad principle of our relationship.

I went into the office and discussed it with someone in the office, and they pointed out this feature to me and I sent back to Mr. Edell and said we will have to break it into two agreements instead of one.

60 We will get the same price, and it is exactly the same thing.

* * * * *

MR. MILLER: I would like to have marked three exhibits if the Court please, which bear upon the matter he is just testifying about.

THE DEPUTY CLERK: Plaintiff's Exhibit 10, 11 and 12 marked for identification. (Documents marked for identification).

BY MR. MILLER:

Q. Mr. Casey, I am going to show you Plaintiff's Exhibit 10, which is a letter dated October 13th, 1954, from the United States Treasury Department to yourself, and ask you if you will identify that document please? A. Yes, it is a letter I received from the Director of Practices in the Bureau of Internal Revenue.

Q. What point was made to that letter in connection with your testimony concerning the nature of the two contingent fee contracts?

61 Just briefly pointed out. A. It draws my attention to the requirements relative to the amount involved in litigation and the amount of the retainer fee. The amount involved in litigation must be given and it points out that this office has not been advised of the amount involved in litigation.

Q. This is the income tax litigation? A. Yes.

Q. I am going now to hand you Plaintiff's Exhibit 11 dated October 8, 1954, being a letter from Mr. Brady to Mr. Edell, and ask

you to identify that document please? A. Well, it is a copy of a letter, stating that it is necessary.

THE COURT: Who is the letter to and from?

THE WITNESS: It is a letter to Mr. Edell from Mr. Brady in my office, saying it is necessary that the enclosed affidavit be signed by you in order to comply with the Treasury Department regulations.

Q. (By Mr. Miller): Do you know what that affidavit was, just in general language? A. No, I don't.

Q. I will hand you Plaintiff's Exhibit 12 a letter dated October 8, 1954 from yourself, Mr. Casey, to the Director of Practices, Commissioner of Internal Revenue, United States Treasury Department, and ask you to identify that for me please. A. Yes, it is a letter which

62 I wrote to the Director of Practices describing my written agreement with Mr. Edell on tax deficiency for the years 1943, 1944, 1945, 1946, and 1947.

Q. And what was the purpose of that letter of October 8th from yourself to the Director of Practices? A. To comply with the requirements that the Director of Practices be notified of matters which are taken on a contingent fee basis.

Q. If I understand you correctly the contingent fee basis was 30% of tax savings, and accompanied by a \$2500 retainer on the income tax phase. Just tell us briefly? A. Do you want me to read it?

Q. Yes. A. Well I described the two computations would be 30% of the difference between the tax deficiency asserted in the amount of tax deficiency finally determined to be due; the calculations to be made after taking out of income the amount, any amount which Mr. Edell would have to pay to the United States Government as excessive profits.

MR. MILLER: I would like to offer, the Court please, into evidence Plaintiff's Exhibit 10, 11 and 12.

MR. BERLOW: No objection.

* * * * *

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WILLIAM J. CASEY

having been previously called as a witness in his own behalf, resumed the stand, was examined, and testified further as follows.

DIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Casey, I believe you left off after having testified to the execution of the agreement and the commencement of work as attorney you performed.

Will you now take us through the steps of what action was taken by you in representing Mr. Edell in these matters? A. Yes, Mr. Amann sent me several cartons of records, correspondence, some diaries Mr. Edell had kept, copies of tax returns and so on.

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And the first thing I did was to examine them to see what was available. I examined them -- I had Mr. Brady and Mr. Benedict and myself --

MR. MILLER: Keep your voice up please, Mr. Casey.

A. -- Together with Mr. Benedict an employee of mine at the time who had about -- had formerly worked with the Renegotiation Board in New York City, and Mr. Brady, we examined the records Mr. Amann provided us with.

Q. I asked you if these records are contained in the boxes which are here without offering them into evidence, were they very voluminous?

A. Yes, they were very voluminous. There were several cartons of them.

Q. Did Mr. Edell know that Mr. Benedict and Mr. Brady, your employees, were assisting you in handling these matters? A. Yes, he talked to them constantly about the matter.

Q. Was the income tax matter held in abeyance while you went forward on the renegotiation initially? A. One of the papers that I received that I noticed there was no papers on the 46 and 47 tax deficiencies. I talked to Mr. Amann about that and he told me he never had any papers and they were all in the hands of Mr. Edell's accountants.

Q. For what years, which were those years? A. For 1946 and 1947.

65 Q. Did those papers pertaining to 1946 and 1947 income problems ever come into your hands as attorney? A. Not all of them, no, they were kept by Mr. Edell's accountants. I went down and I talked to the people in the Internal Revenue Service, who were handling Mr. Edell's income tax returns, and I talked to Mr. Dixon of the accounting firm that had Mr. Edell's books for 1946 and 1947, and it was determined that the tax return for 1945, 1946 and for 1943, 1944, 1945 had been audited by the field, a deficiency had been asserted, a thirty day letter had been issued and a protest was filed which placed them in the appellate division of the Internal Revenue Service.

Q. What is the significance of that? A. In reviewing them, well one of the steps in reviewing them had already been taken and the returns for 1946 and '47 were still in the hands of the examining agent, and the accounting firm which had Mr. Edell's books for 1946 and '47 was handling that and dealing with the agents.

And it was understood we could not get into that until the accountants felt they couldn't satisfactorily conclude it. And I think his name was Mr. Weeis, in the Internal Revenue Service, said and I agreed, the procedure which would have to be followed first would be to get the renegotiation matter settled and then only could we proceed to the 1943, '44 and '45 tax returns and only after that was settled could you proceed to the 1946 and 1947 returns which were at a different level in the Internal Revenue Service.

66 Q. Were those results independent so one step couldn't be taken until the preceding step was finished? A. That is right. You couldn't or wouldn't know where you were and they had to be taken in sequence. Renegotiation in years and the tax had to be taken in chronological order.

Q. To refresh your memory, Mr. Casey, I will show you the protest that was filed May 2, 1951 and ask you if you will tell us what the deficiency tax returns were claimed by the United States for the years 1943, 1944, and 1945. A. The deficiency income tax for 1943 was \$19,393.81.

Q. That was for the 1943 income tax deficiency? A. Tax deficiency.

Q. The additional year? A. The additional year the Government wanted is for 1944 and it was \$50,712.85.

Q. Additional? A. Additional tax. And for 1945 it was \$105,837.63. And a total tax additional or total additional tax for the three years of \$175,944.29.

Q. In terms of the work now that you performed, what was the next area of operation that you went into? A. Well, I discussed with Mr. Weeis of the Internal Revenue Service the character of the case

67 which they had against Mr. Edell, * * *

* * * * *

Q. Was this conversation with Mr. Weeis from the Internal Revenue Service as counsel at the time for Mr. Edell? A. Yes, I had power of attorney and represented Mr. Edell.

Q. Had that power of attorney been completed by Mr. Edell and filed with the Internal Revenue Service? A. Yes. It had to be before I could enter into discussions.

Q. Would you describe to the Court the contentions made by the Government with reference to Mr. Edell's income tax matters that you were handling as counsel?

MR. BERLOW: Your Honor, I object to that question, it is hearsay. It is documentary evidence.

THE COURT: I will have to overrule your objection on the same theory. Now he is authorized to represent this man and he goes down as his representative and what he says is in effect something he is doing on behalf of the defendant Mr. Edell so on that theory I will have to

68 overrule your objection.

You may state what was said.

[THE WITNESS:] Well the representative of the Internal Revenue said that he felt Mr. Edell could not justify the expenses he had deducted on his tax returns; he felt some of the money which he deducted had been applied to buy securities and place --

THE COURT: Applied to what?

THE WITNESS: Applied to buy securities in his sister's name.

Cash payments had been made to a brokerage house and Mr. Edell had signed the tax return claiming a partnership existed between himself and his brother Lewis E. Edell, and the Internal Revenue Service felt no such partnership existed and that it could not be established.

[BY MR. MILLER:]

Q. Mr. Casey, in order to have clarity in the presentation of facts, I would like for you, if possible, to keep separate the work performed in terms of renegotiation, and then we will go into the income tax.

Tell what you did in terms of handling the renegotiation problems for excessive profits? A. I started to do the research on the renegotiation matter in order to make one more effort, to make settlement with the Justice Department.

We analyzed the records and correspondence of Mr. Edell. We researched the law in greater depth on whether or not a manufacturer's agent was subject to renegotiation at all. We had long meetings and conversations with Mr. Edell, and I hired a man, had a man named Rudell Silveragim, who was a lawyer in Washington, who had a lot of experience in Government contract work. I had him do a lot of research in the Tax Court on petitions and so on, to determine just what these manufacturer's agents had been getting allowed in terms of percentage of their business and so on.

And after doing this research and getting control of the facts and the law in the case, I went down and arranged a series of meetings with Mr. Prentice and Mr. Hickey. Mr. Hickey was Chief of the Litigation Section of the Justice Department. Mr. Prentice was in charge of Mr. Edell's case. I first gave them the picture which we had constructed of Mr. Edell's expenses and a comparison of his earnings with the earnings that had been allowed other manufacturing agents and representatives, and tried to persuade the Justice Department that they should be willing to settle for less than \$183,000.

Mr. Hickey and Mr. Prentice said they did not think --

MR. BERLOW: Your Honor please, I again object. I would further repeat this objection. I do object to any oral statements made by any Government officials in reference to the claims of the Government in

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this matter. It being our position that those claims, that is hearsay. And secondly, those claims have been reduced to any number of written documents, and those documents can speak for themselves.

THE COURT: The ruling is the same.

THE WITNESS: The Justice Department was unwilling to make a better settlement offer. They said they had felt they had offered as much as they could justify, as much as they could justify them offering, and he would be unable to prove the expenses that they had allowed and if he did take it to Court and they had discounted the possibility we went on a legal issue in allowing these expenses.

THE COURT: They did stand on this \$183,000?

THE WITNESS: Yes, they stood on the \$183,000. I am trying to describe what I did.

[BY MR. MILLER:]

Q. Did the Justice Department at any time prior to the trial of this issue in the Tax Court, make any offer of settlement below or less than \$183,000? A. No, no.

Q. Why did -- that \$183,000, was that a package deal proposal covering all aspects of the renegotiation case? A. Yes. I asked them if they would stipulate to the \$183,000 so I could go to the Tax Court under Rule 30 of the Tax Court Rules and get a determination as to the lia-

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bility of Mr. Edell. The legal question, whether he was liable to renegotiation at all. They said they were unwilling to do this because that possibility had been discounted in their settlement offer. And if I wanted to try the legal issue, whether he was subject to renegotiation at all, it would be necessary to carry the burden of proving all of his expenses and proving the value of services, and eliminating from his income certain items which could be said not to be renegotiable.

Q. Let me ask you on the \$183,000 offer before you got into the Tax Court hearing, now what was the position of the Justice Department

and yourself regarding the allowance of expenses of Mr. Edell, insofar as it relates to the package of \$183,000?

THE COURT: \$183,000 before the deduction of the expenses or after the deduction of expenses?

THE WITNESS: It was after the deduction of expenses; after all deductions.

THE COURT: All right.

[BY MR. MILLER:]

Q. If it was after the deduction of the expenses, in what amount, approximately? A. About \$60,000. The total picture was that Mr. Edell had received commissions of about \$382,000.

THE COURT: How much?

72 THE WITNESS: About \$382,000 and they were willing to concede that \$49,000 of this was not subject to renegotiation.

They meant he would be charged with renegotiable income of about \$331,000

[BY MR. MILLER:]

Q. What other factors were considered in arriving at the \$183,000 package settlement offer? A. They were ready to allow expenses of about \$53,000, as I recall it.

And there was another \$6,000 which had been a legal fee, which was taken off and the \$49,000 they said was not renegotiable business.

Q. Mr. Casey, you heard the opening statement of Mr. Berlow wherein he stated that \$66,000 worth of expenses was what the Government was willing to concede but you didn't concede it, therefore, you got less.

Will you explain that now to the Court? A. Mr. Edell wanted his case tried in a Tax Court, in the hope that the Tax Court would decide that it wasn't renegotiable at all, and in the further hope the Government would decide, the Tax Court would decide, his services were worth more than the \$84,000 which the Justice Department was willing to concede they were worth.

The Justice Department said that he was entitled to a reasonable profit, for \$24,000 for 1943, \$27,000 for 1944; and \$33,000 for 1945.

* * * *

73 Q. What was the Government willing to allow if you settled on \$183,000 package deal, approximately on expenses? A. My recollection is they were ready to allow about \$60,000.

Q. If you did not settle on the basis of having excessive of \$183,000 was that allowance of expenses available to you? A. No.

Q. Why not? A. Because they said they had discounted the possibility that he wouldn't be subject to any renegotiation at all, and making an allowance for expenses as a basis for settlement which they believed he wouldn't be able to prove or sustain.

Q. When you went to try -- A. I tried to make it on the stipulation of \$183,000 and still fight the legal issue and they refused to do that.

* * * *

74 Q. Well, did Mr. Edell reject the \$183,000 settlement offer?

A. Yes. After I went to the Renegotiation Board to see if they would make a further study of what Mr. Edell's reasonable profits had been, because they had given such a study to the Justice Department, which the Justice Department had used as the basis for their offer of \$183,000, and they said they didn't see a more generous offer that could be made.

Q. Did you then -- A. I then discussed it with Mr. Edell and told him he would have to accept that offer or lose it all together.

And he said he would rather have it fought out in the Tax Court, and he authorized me to reject the offer which the Justice Department had made.

I wrote the Justice Department a letter, rejecting that offer and then I proceeded to prepare to try the case in the Tax Court.

The first thing I did was to move that it be transferred from the Washington docket to the New York docket in order to facilitate the trial because the New York docket was moving faster than the Washington docket.

And we then started to prepare to try the case. We wrote the nine manufacturers with whom Mr. Edell had done business, and whom he represented during the war, who had paid him commissions, to arrange to interview them and see what kind of testimony we could get from them.

It turned out that one of them was out of business and we couldn't find him. Three of them had been sued by Mr. Edell at the end of the war and they were unwilling to testify or help us in any way. So that left five. And Mr. Brady went up to Boston and Providence, New Bedford and I think Worcester, to talk to officials of these companies, Colonial Knife, and others, and they told us what they could and what they had experienced with Mr. Edell, about the activities they had carried on, or that he had carried on for them and we selected four or five men, whom we thought could be used as witnesses, and who were willing to come down and testify when the case came to trial.

I also talked to Mr. Edell and told him I thought a major issue in the case would be what was reasonable value of his services, what was the work he performed worth. And that we ought to get independent testimony on this. He authorized me to get expert witnesses, and I talked to

76 four or five management engineering firms, and people around New York, who had had some experience in solving management problems and evaluating management services, and selected two of them who agreed to appear before the Tax Court as expert witnesses on the value of Mr. Edell's services.

Then the time went on and finally the case got to the head of the calendar in New York and Mr. Leathers, an attorney, who was to try the case for the Justice Department, came up to New York and spent several days in our offices going through the correspondence, and he identified and we agreed on some 270 items of correspondence that he wanted to introduce into evidence.

I might say that in the preparation we did, we analyzed Mr. Edell's diary, and his correspondence, and his railroad tickets, and hotel bills, and so on, to try to see how much of this expense that he claimed could be justified.

I asked him for his books and he told me Mr. Appel, his accountant had died, and lost the books. So there was no books of account. We also found that some of the manufacturers whom he had represented either had gone out of business or wouldn't make their books available, or no longer had their records going back to the years 1943, 1944 and 1945.

77 This was ten years later and it was evident that the problem of proving Mr. Edell's expenses would have to depend entirely on his uncorroborated testimony in great detail, a large accumulation of small matters.

Mr. Leathers, as was his job, talked to me about how we could simplify a trial of this case, and how we could save the Court's time, and what we could stipulate to as a matter of fact.

There were three really, there were four issues in the case. There was the issue of how much income Mr. Edell had received was really negotiable. On that we had incomplete records because Mr. Edell's books were lost, and because the books of his customers were not available in full.

The second issue was how much of the expenses Mr. Edell claimed to have incurred were really attributable to his business. All we had on that was check books and the check books had many large checks made out to cash, and we had no way of identifying those with business expenses except on Mr. Edell's testimony.

The third issue was the value of Mr. Edell's services, and the fourth issue was whether he was engaged in solicitation, which was a factual issue, which would determine and have influence on whether or not he was subject to renegotiation at all.

78 Mr. Leathers was willing to stipulate that of the income additional he had received \$382,000, about \$40,000 was not renegotiable, and also to concede and stipulate that \$42,000 was the proper amount of expense attributable to this renegotiable business.

And he further was willing to stipulate that the value of Mr. Edell's services for the three years would not be less than \$60,000 dollars. This gave me the opportunity to prove that they were more than that amount

and to that extent if I could do it, Mr. Edell's situation would be improved.

I had this discussion with Mr. Leathers and the case was on the ready calendar in New York on May 1st, which was a Monday.

On the preceding Friday I had Mr. Edell to come up to New York and I spent a great deal of time with him, most of Friday and most of Saturday and to the evening of Saturday and Sunday morning, going over his war time experiences and what he had done; refreshing his recollection, refreshing our joint recollection as to how his whole activity had unfolded and what would be presented to the Court. I explained to Mr. Edell on that occasion that I could stipulate and get the issue of expenses out of the way and I could relieve us of the proof of proving that \$40,000 of the income was not subject to renegotiation.

79 I explained to him that we didn't have the proof to justify the deduction of this expense, that we had made calculations and computations as to how much railroad fare, and hotel expenses, and telephone expenses, could be justified from the trips, the record, the evidence would show that Mr. Edell had taken and they wouldn't add up to more than \$5 or \$6,000 a year.

I told him there would be a great deal of difficulty and great trial of the Court's patience, trying to prove all of these expenses in court, and since we were hoping to establish that he did not engage in solicitation of contracts, that some of the expenses he was claiming involved came in large cash checks which had been made out to buy cases of whiskey which he had given to various people, and I felt this would be somewhat inconsistent with our contention that he did not solicit business and I felt it would also impair our effort to establish that he was rendering high class management service of a character which should be compensated generously, of his worth of large amount of income.

And I thought the right thing to do was to get these troublesome expense issues and troublesome accounting issues, on which we had no books of the case by making a stipulation so we could focus our attention and the Court's attention on the two main issues of the case, where

we could make more progress, that of arguing Mr. Edell was not subject to renegotiation because he rendered managerial rather than solicitation services, and his services were entitled to be compensated at \$75,000 a year instead of \$20,000 a year which the Government was ready to concede.

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Q. What did Mr. Edell say when you explained these proposals to him? A. Mr. Edell said I had to try the case and it was a matter of legal judgment and I should make it as I thought best. And we proceeded to review the case until Sunday afternoon when I had to go down to Wilmington, Delaware, on a meeting. I had a meeting down there. So I absented myself. I went down and had my meeting in Wilmington and I got back home Sunday night and I felt very tired and I had a headache, in fact I was running a fever.

I called my Doctor in, he told me I was tired and had picked up some kind of a bug and I should stay in bed for a few days. We had sent out subpoenas to these witnesses and brought them into New York but I wanted to try the case. So I called Mr. Brady and told him to appear in Court Monday morning and to ask the Judge for a continuance until I got to feeling better, which he did. This was done and the Court agreed to postpone the case and take up the case on the following Wednesday, nine days later, provided we came down to Washington, because she was finishing up her tour in New York and was going back to Washington, and would be able to try the case in Washington the following week.

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At the hearing Judge Heron was told we had stipulated expenses and other things, and she put the case over until the following week in Washington.

Q. Was Mr. Edell present at that hearing? A. The record shows he was. I wasn't there.

Q. This was in New York? A. This was the New York hearing. The following Tuesday I was back in shape. Mr. Brady and I brought those papers and exhibits and got Mr. Edell, and with Mr. Edell we arranged for the witnesses, who Mr. Edell had worked for, to come down to Washington and we brought down the two management engineers who had agreed to serve as experts.

And on Wednesday morning we started to try the case. I and Mr. Leathers explained to the Court, to Judge Heron, that we had stipulated to take the issue of expenses out of the case, and to take the issue of what portion of Mr. Edell's income was not renegotiable, out of the case so that the Court and the evidence could be focused on the issues of what was the value of Mr. Edell's services and whether or not he was really subject to renegotiation.

Q. Mr. Casey, when you explain -- A. Yes.

82 Q. When you explained to Judge Heron the stipulations pertaining to the expenses on the other matters, was this in Mr. Edell's presence or was he in the Court Room. And had he authorized you to make such stipulations? A. Yes, certainly.

Q. You may proceed. A. I put Mr. Edell on the stand and took him through his experience -- what he had done during the war. Then Mr. Leathers on cross examination asked Mr. Edell how much had he made in the year 1938. Mr. Edell said he had made \$30,000 in 1938.

Mr. Leathers then produced Mr. Edell's income tax return for 1938 on which he had reported \$3500.

MR. BERLOW: Your Honor please, the transcript of all the testimony in the case is available and I do not think it should be testified to piece meal, as apparently Mr. Casey intends to do.

I would object to any recapitulation of testimony that took place at the trial and would offer the transcript in lieu of that.

THE COURT: How many pages is the transcript?

MR. BERLOW: Approximately 4 or 500 pages. I think if Mr. Casey testifies as to portions of that transcript and the explanations of those portions that we may have to interrogate as to other portions.

83 THE COURT: The thing about which you are testifying -- he conducted the litigation as directed or authorized by your client.

MR. BERLOW: Insofar as the expenses are concerned we raise no issue as to the other aspects of it at all. There are very limited portions of the transcript having reference to the expenses which we could extract from this transcript and submit to Your Honor. I say those are

the things that are the only relevant portion of the transcript.

THE COURT: Mr. Miller, do you care to stipulate with him about the admissions of the transcript?

MR. MILLER: I have certainly no objection Your Honor, to the transcript going in. We are going to refer only briefly to the portions of the trial that went on and I thought it would save Your Honor the trouble of going through all of those pages.

THE WITNESS: The reason what I did is all I am going to talk about.

MR. MILLER: If Mr. Berlow wants to go into any specific matters, I will put the transcript in and I think it would save time if he referred to only that part of the transcript which he thinks is relevant.

THE COURT: You may proceed.

THE WITNESS: Mr. Leathers introduced Mr. Edell's tax returns which showed he had reported \$3500 of income for the year in which he testified he made \$30,000, and he also produced a record showing that Mr. Edell had filed personal bankruptcy in 1938.

* * * * *

[BY MR. MILLER:]

Q. Continue with your testimony. Will you state your testimony as to what you did or what you may have advised or told Mr. Edell?

You now are in the stage of describing the tax court hearing.

A. Yes.

Q. Did you file any briefs then or subsequently with the Government? A. Upon the conclusion of the Tax Court hearing, I filed a 45

85 page brief and an answering brief later on.

Q. Did the Government, following the filing of your brief, file a reply brief to which you subsequently replied? A. Yes, they did and I filed a reply brief.

THE DEPUTY CLERK: Plaintiff's Exhibit 13, 14 and 15, marked for identification. (Documents marked for identification).

[BY MR. MILLER:]

Q. I am handing you, Mr. Casey, Plaintiff's Exhibits 13, 14 and 15,

and ask if these exhibits are the briefs filed by you on behalf of Mr. Edell in the tax case and the Government's reply brief and your reply brief to the Government? A. The Exhibit 13 is my brief which I prepared and filed. The Government then filed a brief. I think we filed simultaneous briefs and then we filed reply briefs and this is the Government's reply brief.

Q. Government's Exhibit 14? A. Yes. And Exhibit 15 is my reply brief. It is signed by me and by Mr. Brady.

Q. By the way, did the Government's reply brief cite the testimony of Mr. Edell as to his income and note whether income was \$5,000? Did you refer to it? What page is that of the Government's brief?

A. On page, page Roman numeral I, which is appended to the reply brief.

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They cite the testimony in which Mr. Edell had this income tax return produced on him and the bankruptcy filing produced on him.

Q. Does that refresh your memory as to the testimony of the income tax return filed? A. Yes, as I said, as I testified that he said \$30,000 and the tax return showed \$3500.

No, this is my testimony. On direct examination he said he made \$25,000 a year. On cross examination he said he was making \$30,000, and then the tax return was produced on cross examination. His bankruptcy petition for 1938 showed his income was \$5,150.

MR. BERLOW: I object to this.

MR. MILLER: I will offer them in evidence.

MR. BERLOW: I would object and move that any reference to a bankruptcy petition, that is a legal record, is not before us and that it be stricken from this case. We don't want to try this bankruptcy case again.

MR. MILLER: No, this is not the point.

THE COURT: I understood these matters were a part of the testimony in the tax case.

THE WITNESS: Yes, Ma'am.

THE COURT: Are you objecting to these exhibits?

MR. MILLER: I am offering for the record --

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THE COURT: Plaintiff's 13, 14 and 15?

MR. MILLER: That is right.

THE COURT: Have you seen them?

MR. BERLOW: I have no objection to that. I have no objection to those records going in and Your Honor reading all of the contents. And I have no objection to the transcript being submitted into evidence and Your Honor reading that if you are so inclined.

But I do object to any testimony by this witness as to isolated portions of the previous transcript and move that any such references be stricken.

MR. MILLER: In view of counsel's position, I will offer in evidence the transcript.

THE COURT: Very well, Plaintiff's 13, 14 and 15 are admitted in evidence.

Mr. Berlow may want to use his transcript. Well, you may use it if you want to. You can get it from the Clerk at any time. What number did you assign?

THE DEPUTY CLERK: Number 16.

THE COURT: Plaintiff's Exhibit 16 is admitted.

THE DEPUTY CLERK: Plaintiff's Exhibit 16a, b and c marked and received.

[BY MR. MILLER:]

Q. Will you continue now to tell the result of the hearing, moving on from the portions you have already testified to, Mr. Casey? A. Well, soon after the filing of the briefs, Judge Heron handed down a decision which found that Mr. Edell was indeed subject to renegotiation.

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MR. BERLOW: Again, Your Honor please, I object.

THE COURT: Is there a written opinion?

MR. MILLER: Yes, Your Honor, and I will ask the Court to take judicial notice of Volume 28 of the Tax Court of the United States Reports covering the period from April 1, 1957 to September 30, 1957, particularly page 601 of such report entitled, Edell v. United States, continuing through the opinion therein and ending on page 625.

THE COURT: 625?

MR. MILLER: 625.

THE COURT: Well, I will take judicial notice of it but I do not have a copy of that volume.

MR. MILLER: May I hand it up to Your Honor?

(Volume was passed to the Court).

THE COURT: Do you all agree or disagree as to what the opinion is?

MR. BERLOW: There is no disagreement about that, Your Honor.

THE COURT: All right.

MR. MILLER: I would like to have Your Honor read it but if you want me to move ahead now and we will put it in evidence.

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[BY MR. MILLER:]

Q. Without going into the written opinion which the Court has, what was the outcome of the Tax Court proceedings? A. That Mr. Edell's excessive profits was and it was held that he owed excessive profits of \$150,000.

Q. And under your fee arrangements with Mr. Edell what fee were you entitled to as a result of the determination of excessive profits in the tax court? A. 30% of the difference between \$183,000 and \$150,000, which is \$9,900.

MR. MILLER: If the Court please, I would like to have this marked. I thought I would have a Jury trial or I wouldn't have gone to the expense of having so many exhibits made up.

THE DEPUTY CLERK: Plaintiff's Exhibit 17 marked for identification. (Document marked for identification).

[BY MR. MILLER:]

Q. Directing your attention to Plaintiff's Exhibit 17, will you tell us how your computation or fee under the excessive profits fee arrangement is arrived at? A. Well, the Justice Department had offered to settle the case on the basis of Mr. Edell's excessive profits of \$183,000.

The Tax Court, based upon the stipulation which had been filed as

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to expenses and non-renegotiable papers and as to the finding of Judge Heron, Mr. Edell's services were worth \$150,000 rather than \$60,000 which the Government conceded, found that he was liable for excessive profits of \$150,000.

By the deduction of 150 from 183 to show the saving under our agreement the amount of \$33,000 and 30% of that was \$9900.

Q. What date was the determination made and the fee of \$9900 due under your fee arrangement? A. Well it is in the tax court volume. I forget when it came down. It was toward the end of 1956.

Q. By June 10, 1957? A. June the 10th, 1957, yes.

Q. And when did that determination become final? A. That becomes final when no appeal was taken.

Q. Was that 90 days? A. 90 days.

Q. Were you therefore asking interest upon the expiration of the 90 days from the date of the judgment on which the \$9900 was based on, or was handed down? A. Yes, that is right. Mr. Edell spoke to me about appealing the case.

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Q. Was any decision made by your client, Mr. Edell, whether or not to appeal the Tax Court's determination? A. He spoke to me about it and I advised him the decision was based upon findings of fact by the trial judge, the Government witnesses had testified Mr. Edell had solicited business, there was no basis on which an appellate court would likely upset that finding, or find as to the value of the services which I thought was quite good, and I thought he would be wasting his money to try to appeal the decision and he agreed with that advice.

He accepted that advice and he didn't file an appeal. Then we had to proceed to determine how much of a tax credit he is entitled to and the calculations had to be made with the Justice Department. We had arranged to get the securities out of escrow and Mr. Edell paid the amount determined to be due and got his securities, the balance out of escrow.

THE COURT: This case, I haven't read your opinion yet, but this case settled only the renegotiation?

THE WITNESS: Yes, only the renegotiation. We had to settle the renegotiation and then the tax matters later.

THE COURT: I did not have any question about that but I was not just clear about whether this was renegotiation itself.

THE WITNESS: This was a case that was pending since 1949 only on renegotiation.

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[BY MR. MILLER:]

Q. Following the determination of the \$150,000 judgment of the United States Tax Court, then was it possible and did you make the necessary computations to give tax credit in order to approach and attempt solutions of the income tax problems? A. Yes, that was done and Mr. Edell got his securities out of escrow and I asked him to pay me the \$9900 and he said he would rather wait until the tax thing got settled and he would pay me all at once and I went along with that.

Q. What was then done about the income tax claims for 1943, 1944, 1945? A. Well then we proceeded to talk to the man of the Appellate Division, who was in charge of the income tax cases for the years 1943, 1944 and 1945. And he told us that he would accept a settlement based on allowing Mr. Edell about \$14,000 of expenses for each of the four years, and if he didn't accept that he would recommend a 50% civil fraud charge and I -- the issues involved in the income tax case were whether or not Mr. Edell had a family partnership with his brother and in the Tax Court proceeding on renegotiation, the Government produced an FBI agent who testified that he talked to Lewis Edell, who knew nothing about Harry Edell's business, and said he had no part in the business, and the people for whom Edell worked, they all testified they never knew of Lewis

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Edell, and had never heard of Lewis Edell.

I felt we couldn't get anywhere at all on the family partnership, that is the family partnership contention, and with that and the fact that they were claiming some of the expenses had been represented in a fraudulent way, they were going to impose a fraud penalty, I advised Mr. Edell to take the settlement that had been offered and that settlement -- if you want that --

THE COURT: Did he accept it?

THE WITNESS: Yes, he did accept it. He accepted the settlement that I recommended he take.

Q. [By Mr. Miller] Mr. Casey, would you look at the exhibits number --

THE DEPUTY CLERK: Plaintiff's Exhibit 18 marked for identification. (Document marked for identification).

[BY MR. MILLER]:

Q. Will you please look at Plaintiff's Exhibit 18 which has been placed up on the board and shown to opposing counsel?

Would you review that and tell the Court the basis of the settlement obtained by you for Mr. Edell with reference to the income taxes claimed for excessive additional income taxes, for the years 1943, 1944, and 1945? A. Well, remembering the Government had started off asking for \$175,000 of additional tax, as I testified before. In the first column --

94 Q. Wait a minute. Do you recall -- first it doesn't appear there. What was the Government's original claim for additional or total tax? A. \$175,000.

THE COURT: That was for these three years?

THE WITNESS: For the three years. \$19,393 for 1943; \$50,712 for 1944; and \$105,837 for 1945.

Q. [By Mr. Miller] All right now would you explain the relationship between the original claim of the Internal Revenue and the figure appearing on the board, the amount claimed by the Government for 1943?

MR. BERLOW: Before we go into this, I would like to make reference to the contract on which this suit is based, and make an objection to any questions which are phrased, and referred to language other than that used in the contract.

The contract which is attached to the complaint has been marked as an exhibit here. It states that I -- it is dated July 28th. And I am reading from the second paragraph. It is Plaintiff's Exhibit 6, Your Honor.

THE COURT: I have a copy of it attached to the complaint. It is dated July 28th, is it not?

MR. BERLOW: Yes, Your Honor, and the second paragraph -- after the second sentence -- after the first sentence it says:

95 "I hereby stipulate and agree that you may retain as and for your compensation 30% of the difference between the proposed deficiency."

Now I say that any testimony as to what for example, the amount claimed by the Government was is irrelevant, that what the testimony should be directed to is the proposed deficiency and not to any other figure because the fee is to be calculated on the basis of the contract that is sued upon.

So with that objection, I move to strike any testimony referring to any starting figure that is not the proposed deficiency.

THE COURT: What do you claim the proposed deficiency was, Mr. Berlow?

* * * *

97 MR. MILLER: I believe, Your Honor, we can stipulate that the figures under the heading Amount Claimed by Government represents the amount of the income taxes claimed for the respective years by the Internal Revenue Service, after giving effect to the income return as the result of the renegotiation judgment.

MR. BERLOW: I think we can agree that what I am attempting to do is to relate this language to the language used in the contract.

Let us see if I understand it, that the language used in the contract is proposed deficiency and that this figure, which the total under the amount claimed by Government, is the proposed deficiencies from which has been subtracted that income which was repaid as a result of the renegotiation case? Is that correct?

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MR. MILLER: No, not quite, because it ignores a portion of the same contract you are reading from.

THE COURT: Would it not be better to stipulate that \$175,000 was the amount of the proposed deficiency and after crediting on the proposed

deficiency of \$175,000, the sums which were credited as a result of the reduction in income from the renegotiation, that there remained whatever that figure is?

MR. MILLER: \$124,611.42.

MR. BERLOW: I will stipulate to that, that that is the method of calculation that was used, but it is our position that is not in accordance with the language of the contract; that isn't the proper method to be used but I can reserve that for argument.

THE COURT: You do claim though that \$175,000 was the proposed deficiency?

MR. BERLOW: Yes, that is correct.

[BY MR. MILLER:]

Q. Would you briefly tell us what figures are shown on Plaintiff's Exhibit marked Attorney's Fees for Reduction of Income Taxes? A. The first column is a recomputation of tax liability after taking the income which the Government claimed Mr. Edell had received in arriving at the proposed deficiency, \$26,000 for 1943.

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Q. Mr. Casey, I do not believe you have the right figures, so we will have the correct figures in the record will you step closer. A. I see them.

Q. What were you reading from? A. I am reading from -- I am telling you how I got the \$16,000 and what it represents.

Q. I see. A. This is a tax liability based on a recomputation of Mr. Edell's tax liability after eliminating from income \$26,000 which was the portion of the \$150,000 of excessive profits which Judge Heron in her decision determined to be attributable to 1943.

Q. I see. A. And eliminating \$26,000 of income and using all of the figures the Government used in arriving at its proposed deficiency, the amount Mr. Edell would owe for 1943 was reduced from \$19,393 to \$16,406.

Q. What then happened in the course of your handling the income tax matter for Mr. Edell to the \$16,406.52 claimed by the Government

for 1943? A. Well, in the settlement which the Internal Revenue Service told us we had to take or face a court penalty that eliminated additional expenses and after the elimination of those expenses the amount Mr. Edell owed was \$14,040.37 for 1943.

Q. That resulted then in a tax savings of what? A. Of \$2,366.

Q. And 15¢? A. And 15¢.

Q. And will you give us the same figures for 1944? A. For 1944 it was done exactly the same way except that we eliminated \$54,000 from income in 1944, that being the portion of \$150,000 of excessive profits which Judge Heron determined to be attributable to 1944.

Then we were able to eliminate additional expenses, and get additional expenses allowed over the expenses which the Internal Revenue Service had allowed in their proposed deficiency, which reduced the amount finally determined to be due for Mr. Edell for 1944 to \$21,265.84 and that produced a savings of \$11,641.87.

Q. Will you give us the comparative figures for the year 1945?

A. In 1945 we eliminated the remainder of the excessive profits judgment which amounted to \$70,000.

After eliminating that income from the proposed deficiency, the remaining tax liability was \$75,297.19 in negotiations with the Internal Revenue Service and the additional expenses were allowed which further reduced the liability to \$62,592.54.

Q. And what were the total savings effected by you as attorney for Mr. Edell for those years, 1943, 1944 and 1945? A. \$26,712.67, after giving Mr. Edell credit for the reduction of income on the excessive profit judgment.

Q. Under your fee arrangement with Mr. Edell what were you entitled to receive as attorney's fee for the income tax savings for those years? A. 30% of that.

MR. BERLOW: I object to that as being a conclusion.

THE COURT: I will overrule the objection.

THE WITNESS: 30% of that savings amounted to \$8,013.80.

[BY MR. MILLER:]

Q. As of what date was the income tax settlement made upon your claim? A fee of \$8,013.80 and interest commencing? A. February 1958, I believe.

Q. Was there any provision in your fee agreement with reference to income taxes reflecting the procedure to be followed after the renegotiation was determined? A. Yes, there was.

102 Q. Will you tell us what that was please? A. The last sentence of our agreement says, that I am to get 30% of the savings; and further, it is understood and agreed in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount paid by me to the United States as a result of renegotiation, and you will not receive 30% of the tax reduction resulting from any such renegotiation refined and that is the calculation I just described.

Q. You were reading the provisions of plaintiff's exhibit 6, were you? A. Yes.

Q. Did you have any unreimbursed expenses in connection with your handling of Mr. Edell's renegotiation and income tax matters?

A. Yes, I did. I paid for with witnesses. I paid for the transcript. And I had various expenses for which I billed Mr. Edell.

Q. Did you send Mr. Edell any statement for fees and expenses?

A. Yes, I did.

THE DEPUTY CLERK: Plaintiff's Exhibit 19 marked for identification.

103 MR. MILLER: Your Honor, Plaintiff's Exhibit 19 for identification is a letter to Mr. Edell from Mr. Casey dated March 20, 1958. It is a letter containing an enclosure. May I show it to counsel?

THE COURT: Yes, you may.

* * * * *

[BY MR. MILLER:]

Q. Mr. Casey, I hand you Plaintiff's Exhibit 19, being a letter of March 20th from yourself to Mr. Edell, will you tell the Court whether that letter was mailed to Mr. Edell by you or your office? A. Yes, it

was. It was a letter I wrote to Mr. Edell in March of 1958.

Q. Without going into the details, what was the nature of the request? A. I think the letter speaks for itself, asking him to pay his bill.

104 Q. I am asking you to examine the exhibit attached to that letter and tell the Court whether or not there is an itemized statement of expense unreimbursed which are claimed by you, Mr. Casey, to Mr. Edell? A. Yes, there was an itemized list of expenses incurred by my office, by Mr. Brady and by myself and payments for witnesses.

Q. Mr. Casey, which date of the letter pertains to the itemization of the \$1,003 claimed by you as unreimbursed? A. Well it is dated October 7, 1957. Attached to the bill and then there seem to be additional expenses -- these are earlier. December 1957 is the latest one of \$1003.50.

Q. What is the date of that itemization? A. October 17, 1957.

Q. What was the total mount of your itemized expenses? A. \$1003.50.

Q. Has any portion of the \$1,003.50 to you as an attorney for Mr. Edell, been paid to you or your office by Mr. Edell? A. No.

Q. The other items for expenses which appear in the exhibit have been paid in one form or another? Is that correct? A. I guess so.

105 Q. In other words, you are not making a claim for the other items of expense except the one dated October 7th. A. These were expenses that were incurred in 1956.

Q. I am correct then, Mr. Casey, in saying that the October 7th, 1957 itemization is the only expenses that you claim are unreimbursed? A. Yes, sir.

Q. I will hand you Plaintiff's Exhibits 20 and 21 and 22 and ask you if those are letters requesting on demand payment of fees for expenses set by you on the dates they bore to the defendant Mr. Edell? A. It is a letter of February 1959 which I sent; another one May 1959; and another one March 1959.

MR. MILLER: I will offer into evidence the exhibits starting with 19 through 22.

THE COURT: Have you seen the exhibits, Mr. Berlow?

MR. BERLOW: Yes, Your Honor, I have no objection to them.

THE COURT: All right, admitted.

(Exhibits 19 through 22 admitted into evidence).

[BY MR. MILLER:

Q. Have any of the items or fees of expenses which you have testified to been paid by Mr. Edell? A. No.

MR. MILLER: You may inquire, Mr. Berlow.

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CROSS EXAMINATION

BY MR. BERLOW:

Q. Mr. Casey, you testified at the outset you had written a great many books and articles in reference to tax matters? Do you recall so testifying? And in addition to that you have represented many clients in tax cases in the Tax Court? A. Yes.

MR. MILLER: He didn't testify to representing many cases in the Tax Court.

[BY MR. BERLOW:]

Q. Have you represented many clients in the Tax Court? A. I have represented many clients in tax court procedure, yes.

Q. Prior to your meeting with Mr. Edell had you discussed with him at the time you met Mr. Edell, did you discuss with him your qualifications. A. No, I never discussed my qualifications with Mr. Edell. He sought me out.

Q. You never discussed any qualifications? A. I never felt any need to. Never, no.

Q. Prior to the case you tried for Mr. Edell, had you ever tried any renegotiation case at any time? A. Yes, I had, several.

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Q. In the Tax Court? A. Well I had tried several before the Renegotiation Board; I had some pending in the Tax Court that were settled, they were adversary proceedings, and Mr. Edell's case was the first renegotiation that I had to try all the way through to a decision.

Q. That was the first case that you tried in the Tax Court?

A. The first case I tried through to a decision in the Tax Court, yes.

Q. At the time you first met Mr. Edell, it was brought to your attention that he was represented by another attorney, Mr. Douglas Amann? A. I asked him about it, yes.

Q. And at that time did you inquire what was the -- what was the date when you first met Mr. Edell in Washington? Do you recall that?

A. In December of 1953.

Q. And when was it that you first spoke to Mr. Amann with reference to this matter? A. February of 1954.

Q. And it was in July or August that you entered into these agreements with Mr. Edell? A. That is right. They were reduced to writing in July, on the 28th and August 6th.

108 Q. Prior to the time you entered into these agreements, you ascertained Mr. Edell had paid Mr. Amann, had you not? A. Yes, I did.

Q. You determined he had paid him in full, had you not? A. He didn't pay Mr. Amann until Mr. Amann asked him for it.

Q. He made a payment to Mr. Amann as far as you were concerned that was satisfactory to Mr. Amann? A. He made a payment when Mr. Amann said he would accept, he would accept in satisfaction of the amount that would be due him.

Q. That was made a few months after Mr. Amann made the demand? Is that right? A. He paid Mr. Amann maybe ten thousand dollars throughout a period of years and when he said he didn't want Mr. Amann in the case and wanted to get him out, I told him I wouldn't take the case until Mr. Amann was satisfied.

Q. And Mr. Edell paid him and he was satisfied? A. He didn't pay him what he wanted but he paid him enough that he called me up and told me he wanted to get out of the case and he would accept what Mr. Edell had paid him and sent me the papers.

Q. Now you have testified as to a lawyer by the name of Mr. Socklow? A. Yes.

109 Q. A matter in which he was involved? A. Yes.

Q. Did you send Mr. Edell a separate bill for the services which you had rendered in that matter? A. Well, for part of the services. I told Mr. Edell that.

Q. My question to you, did you send him a bill? A. I don't know whether I sent him a bill but he paid me \$500.00 for getting Mr. Socklow's attorney's lien released so he could get his \$42,000 out of Mr. Socklow's hands.

Q. Let me just show you without having it marked, show you this check dated February 23, 1955 in the amount of \$500.00 payable to your order, endorsed by you, and I ask you to read the notation on the left hand portion of the check, and after you have read that, I would like to ask you whether or not that doesn't refresh your recollection that you did bill Mr. Edell for your services rendered in the Socklow matter, and that this check was for payment in full? A. I guess it does. I said Mr. Edell paid me \$500.00 and I asked him for \$500.00 for handling that matter, which wasn't anticipated in the original payment. This is the \$500.00 he paid me at that time. This is February 5 and that would be about the right time.

110 Q. You never sent him any other bill for the services rendered in the Socklow matter other than the bill rendered on that check?
A. Not that I know of.

Q. So the \$2500 retainer that was paid to you some time later by Mr. Edell, that was not, was it, in any sense payment for any services rendered in the Socklow matter? A. It was paid earlier, not later. The question said pay later. The \$2500, I believe, was paid earlier, not later.

Q. That is correct. I was mistaken but the retainer was paid earlier than this \$500.00 was paid in the Socklow matter and that represented full payment for that? A. That was payment only for that portion of the Socklow matter which involved my getting Mr. Edell's money released from Socklow's attorney lien.

It did not cover the work my office had to do to get Mr. Edell's \$42,000 released from the lien from the United States Government.

After we accomplished that we went on the basis of that that we could get the \$42,000 from Mr. Socklow and I got the order from Judge Kaufman agreeing that money need not be held for the security of the Government.

Then Mr. Socklow asserted a further claim, which was brand new, and said Mr. Edell hadn't paid him a couple thousand dollars for services he had rendered, in setting up the escrow agreement and getting

111 Mr. Edell in a position where he would not be subject to the lien, or the property would not be subject to the lien of the United States Government, based upon excessive profit judgment.

All that was done before the matter of the attorney-lien was brought up, and it was done over the period running from April 1954 to maybe August or September of 1954 and then we had this Mr. Socklow's attorney-lien to deal with. So there were two steps here.

Q. I think I asked you a very simple question, was any portion of the \$2500 -- A. Yes, the answer is yes.

Q. No portion of that was payable by Mr. Edell for work you did in the Socklow matter? Will you answer that yes or no? A. The answer is yes. It was payable for the work I had done generally for Mr. Edell up to the time the retainer agreement -- and before the retainer agreement I had worked on his real estate matter and the Government judgment in which Mr. Socklow was involved.

Q. The fact that no reference is made to that in the retainer agreement is a result of inadvertence on your part? Is that correct? A. No, it is not the result. It is because I didn't think it was necessary to go

112 into that kind of detail. This was \$2500 for generally apprising Mr. Edell on all of his problems. I treated it as one problem. He was involved with Mr. Socklow, Mr. Amann and all of them in this business. The \$500.00 was Mr. Socklow's attorney-lien.

Q. Now did there come a time when you entered into a written agreement with Mr. Edell? Would you tell us when that was? A. That

was in the latter part of July 1954. The agreement is dated July 28th and I assume it was at that time.

Q. That was the first agreement that you entered into with Mr. Edell? A. I believe it was the first written agreement, yes.

Q. Did he sign it? A. Yes.

Q. Did you sign it? A. Yes.

Q. Do you have it here today? A. Yes.

Q. Has that been marked? A. Oh, yes.

Q. It is those two agreements? A. The two agreements, yes.

113 Q. Prior to those two agreements was there not another agreement that had been entered into with Mr. Edell? A. I don't know. I don't recall that there was. I know that I talked to Mr. Edell and told him the understanding I had arrived at with him verbally up until the two agreements.

I don't recall whether or not it had previously been set up in a single agreement on paper or if it was whether we signed the agreement. I don't have any recollection of that and I do not find any copies of the agreement.

Q. Do you recall on June 23, 1960, in Mr. Dickey's office, you testified under oath in the form of a deposition in this case? A. Yes, sir.

Q. Can you recall testifying in that deposition as to a prior agreement? A. No, I don't recall whether I did or not. You told me that such an agreement existed.

MR. MILLER: I think I will object to the inquiry about the deposition without telling us about the page and what the deposition is about.

MR. BERLOW: I will have to find that portion.

THE WITNESS: Do you have that agreement?

MR. MILLER: Please, Mr. Casey.

MR. BERLOW: Let us, in order to save time, let us put it this way.

[BY MR. BERLOW:]

114 Q. And did there come a time, did there not, when it was brought to your attention as a matter of practice the Internal Revenue wanted the two separate agreements in this matter? A. No, no that wasn't the case. I testified to what happened there, that the Internal Revenue

had to file with the Committee on Practices for the tax matter which was before the Internal Revenue Service and not before the Tax Court.

I would have to file an agreement showing that I received a retainer, and since it was my understanding with Mr. Edell, I was only to get a \$2500 retainer, I thought the Internal Revenue should be split into two agreements and the \$2500 should be made applicable to the Internal Revenue retainer.

That is what I did. I set up the two agreements and Mr. Edell signed them on that basis. Whether there was a preceding agreement which were both together, I don't know. I do know the matter came up but whether there was a written agreement putting them together or if there was whether it was signed. I can't find a copy of one anyway.

Q. Let me read page 9 of the deposition, do you recall I asked you: knowing all of this you testified to and did there come a time when you negotiated this agreement with Mr. Edell which was finally reduced to the form of a written agreement for the first time in this document which

115 has been marked Plaintiff's Exhibit 1?

Do you recall giving the answer, well that is right. That was not for the first time. I explained there was a previous document which said the same thing, but the renegotiation and income tax were in one document and they were separated.

Do you recall then my asking you, the first document did you retain a copy of that?

And do you recall your answer: I don't think so. I called that agreement off and entered into a new one and it was destroyed I think, I think so.

Do you recall my asking you, have you made a search for copies of it and do you recall answering, I looked through the files. And do you recall my asking you, and you have been unable to find it? And do you recall your answer, yes? And then do you recall my asking you the reason you stated for the alteration or destruction of the original agreement and entering into the new agreement, was the original agreement contravened the rules of the Internal Revenue Department?

And do you recall your answer that, no, it didn't contravene the rules, it clouded up the judgment of the Committee on Practices as to whether an adequate retainer had been received on a tax matter and I thought it best to separate it.

116 Does that refresh your recollection that there was -- A. That refreshes my recollection --

Q. My question is, does that refresh your recollection that there was an original agreement in this case that was destroyed? A. No, it does not. I don't know whether I was wrong then or wrong now. I don't know whether there was an original agreement. If there was, Mr. Edell would have a copy of it. I know we decided to make it two agreements, whether that decision was arrived at before we prepared a single agreement, I don't know. And if I said I knew then, I was mistaken then, and I have searched and thought about it and this is my testimony now.

Q. Your testimony now is, you don't know whether this testimony is correct or the testimony that you gave then, is that correct? A. I don't know. I don't know that there was an earlier agreement that was reduced to writing. I don't know whether there was or not.

Q. Did there come a time when Mr. Edell did make a payment to you totalling \$2500? You testified that that took place in August.

A. Three payments, yes.

117 Q. Three payments and you can not testify whether that payment was made before or after the new agreement was drawn up, can you? A. Oh, yes, I can.

Q. You don't know whether there was an original agreement, do you? A. Yes. You said a new agreement. I am talking about the agreement that existed and the payments were made afterwards.

Q. Do you know insofar as the original agreement was concerned? A. I don't know whether there was an original agreement.

Q. And so you don't know whether that original agreement referred to a figure of \$138,000 or a figure of \$150,000, or \$183,000 or \$138,000? A. I don't know whether there was an agreement, and if

there was, I don't know what it said, except I knew what it was supposed to reflect.

Q. But there did come a time that you prepared two separate agreements? A. Yes, so far as they were the first agreements prepared.

Q. So as far as you know now -- ?

MR. MILLER: Your Honor please, I am going to object. So far as the new agreement, because in fairness he kept saying in the deposition he thinks indicating uncertainty.

118 THE COURT: I thought the witness had testified some figure was in an agreement by mistake and this was redone and reexecuted? Isn't that right?

MR. BERLOW: No, Your Honor, the testimony in the deposition as I understand it was, there was an original agreement and that agreement was destroyed.

Now it is developing there was still another agreement, two separate agreements. There came a time when there were two separate agreements drawn by Mr. Casey and in the second agreement there was a figure inserted of \$138,000.

MR. MILLER: Your Honor please, I am going to object to the characterization as to the second agreement. It has never been established that there was ever a first either in the deposition or now.

THE COURT: I will sustain the objection.

[BY MR. BERLOW:]

Q. And the agreement that is the basis for the suit in this case insofar as the renegotiation case is concerned contains reference to a Government offer of \$183,000? A. Yes, sir, it does.

Q. Now prior to that time that same agreement did it have in it the figure of \$138,000? A. Yes, the previous version of the same agreement.

Q. You explained to Mr. Edell that was a typographical error?

119 A. I explained it was a mistake, yes.

Q. Was that after Mr. Amann had delivered all of Mr. Edell's papers to you? A. Yes.

Q. Was it after Mr. Edell had paid a portion of the retainer?

A. No, it was before Mr. Edell had paid any portion of the retainer.

Q. And Mr. Edell, after you explained that to him, the error, he executed a new agreement which contained the figure of \$183,000?

A. Yes, he did.

Q. Now the agreement which is the basis for the claim in turn makes reference to a Justice Department offer.

Do you recall that portion of the agreement? A. Yes.

Q. Specifically it states that you may retain as and for your compensation 30% of the difference between the Justice Department's offer of \$183,000 and the final settlement of the dispute.

Now included in the Justice Department's offer was a certain figure allowed the tax payer for expenses. Do you recall what that figure was? A. I believe it was something around \$60,000.

Q. And do you recall how much it was per year? A. I had a note here on that. I believe --

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Q. Would it refresh your recollection if I showed you Defendant's Exhibit 3, which was marked for identification in the course of the deposition, and ask you to look at that and see if that refreshes your recollection as to what the offer was insofar as the expenses were concerned?

A. Well, the offer was for a total settlement and in arriving at the offer, certain expenses were allowed and those expenses were \$14,400 for 1943; \$18,300 for 1944; and \$20,700 for 1945.

Q. Would you look at the '45 figures and see if there is an allowance for attorney's fees in addition to that? A. Yes, but that was attributable to business that was taken out of renegotiation in the stipulation.

In the stipulation we got credit for that \$10,000 because we took \$40,000 that could have been renegotiable which was collected by these legal expenses in 1946.

They were taken off the top. So we got credit for those expenses in the stipulation that we made because when we reduced the negotiable income from 382 to 342.

Q. Now this settlement proposal had been made to Mr. Amann originally, had it not? A. Yes. No, I think it was made to Mr. Pittman.

Q. To Mr. Pittman and Roberts, the Pittman and Roberts firm. I think it was then passed on to Mr. Amann. It was in response to the Pittman and Roberts offer.

121 Q. At some time you did testify a great many records were delivered to your office in reference to this matter? A. Yes, sir.

Q. Do any of those records have reference to the expenses of Mr. Edell? A. Well, there were check stubs, there were certain railroad tickets, and hotel bills, all which added up to only a few thousand dollars.

Q. Do you know whether or not there were any other records that had been delivered to the United States Government Attorney's Office prior to the time that you got into the case? A. Nobody ever told me there was any delivered to the United States Government. There were certain records that were down there with the accountant firm named Scovell, Wellington and Co. in Washington and I couldn't get those because Mr. Edell hadn't paid them the fee they wanted so they held the papers and I talked to Mr. Edell about it and I never did get those papers.

They were just reconstructions.

Q. Insofar as you know the settlement offer proposed by the attorneys representing the United States Government, insofar as it related to expenses was not based upon any documentary evidence whatsoever? A. I don't know.

122 Q. In your experience as a tax attorney, has it ever been brought to your attention that in the settlement of a litigated tax matter, the Government would stipulate to expenses when they were not aware of any documentary evidence to substantiate those expenses? A. Oh, they were aware of each documentary evidence that existed.

Q. Would you tell me what those were? A. They had FBI agents looking at these records of Mr. Edell's.

Q. Were you present when the FBI --

MR. MILLER: Just a minute, wait until he finishes.

MR. BERLOW: Excuse me.

[THE WITNESS:] No.

Q. [By Mr. Berlow] But it was brought to your attention?

A. They told me they had FBI reports on all of Mr. Edell's expenses and non-expenses.

Q. They never exhibited those reports to you? A. No, they wouldn't show them to me nor would they show them to Mr. Amann, because Mr. Amann had asked for them and they wouldn't show them to him.

Q. Other than the FBI agent's reports do you know of any other basis the Government attorneys had in concluding in 1945 that Mr. Edell's expenses were \$20,720? A. They told me they were willing to settle --

123 Q. No, my question is do you know of any evidence other than the evidence of the FBI reports which the Department of Justice lawyers had upon which they based a settlement offer of \$20,720 --? A. They had no evidence reports except the reports that the FBI agents had. They had seen those records and they worked on the basis of those records.

Q. Do you know whether the FBI investigation, which was the basis for the settlement proposal, that contained in those were reference to Mr. Edell's check book and check stubs which he had kept all during this period of time would show what the expenses were? A. I saw those check books, they were all made out to cash. There was no way of identifying what they were for. I asked Mr. Edell what they were for and he couldn't explain them for me except his allowance -- on some items.

Q. From your examination of the records that Mr. Edell brought into you, you could not, I think your testimony is, you could not substantiate more than \$5,000 of expenses per year? Is that your testimony?

A. On the basis of my reconstruction of what it would cost Mr. Edell to make the trips and stay at the hotels and his diary, and his correspondence, and all I was able to specify, showed we could not reconstruct more than \$5 or \$6,000 a year.

124 Q. And the Government's proposal of \$20,500 for the year 1944 was based upon records that never came to your attention? A. Oh no, it wasn't. Not that I recall. I don't know that it was based on any records at all.

Q. You don't know what it was based on other than FBI reports?

A. That is all I have to base it on, the investigation of Mr. Edell's records and his books were lost and in an attempt to dispose of the legal issue, and being generous, they didn't think they could prove these allowances of all these expenses in Court. I had to agree with them.

Q. When you say they were being generous there was a lawyer representing the Department of Justice at that time by the name of Harlem Leathers? A. Mr. Prentice had the case at that time.

Q. Do you know where Mr. Prentice is now? A. No, I don't.

Q. And he told you at that time, it is your testimony he told you the figure of \$20,000 for expenses in 1945 was based upon a feeling of generosity he had toward Mr. Edell? A. No, I didn't testify to that at all.

Q. You never? A. No, I didn't. He had no feeling of generosity to Mr. Edell. I said he was allowed more expenses than he felt

125 he would be able to prove in Court in order to dispose of the legal issue and in order to remove from the Government the hazard that we would be able to win in Court on the legal issue so they would collect nothing.

Q. He was willing to allow this \$20,000 of expenses even though he knew of no evidence? A. He wasn't allowing \$20,000 of expenses. He was offering a settlement and in arriving at that settlement that was one of the features of calculations. It wasn't allowing any expenses.

THE COURT: Mr. Berlow we are going now to suspend for the day until 10:00 tomorrow.

(The Hearing was concluded at 3:45 p.m. until the following morning).

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Washington, D.C.
November 21, 1962

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WILLIAM J. CASEY

the plaintiff, resumed the stand and testified further as follows:

FURTHER DIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Casey, in your previous testimony in direct examination, you described the outcome of the claims for income taxes for the years 1943, 1944 and 1945. Will you tell the Court why you did nothing as to the tax years 1946 and 1947? A. Well, as I testified in direct examination, in conversations I had with the Internal Revenue Service immediately after I took on the case, it was agreed that it would be necessary to first clear up the renegotiation matter and determine how much excessive profits Mr. Edell should return to the Govern-

130 ment. Then the tax returns for the years 1943, 1944, 1945, had been the subject of a thirty-day letter, a Mr. Amann had protested the deficiency and that was before the Appellate Division of the Internal Revenue Service, whereas the 1946, 1947 returns were still in the hands of the field agent, that matter had not yet gone to the Appellate Division and it was determined that these years should be taken up chronologically from the beginning to the end. And after we had arrived at an agreement, a settlement on 1943, 1944 and 1945, I recommended to Mr. Edell that he accept that settlement for those years because otherwise he would have had to face a civil fraud penalty of 50% on top of the tax deficiency and I saw no basis on which the settlement could be improved and the civil fraud penalty, indeed, would have made it a great deal worse.

Then, a lawyer -- Mr. Edell delayed making a decision on this recommendation and he sent up to my office a lawyer named Laurens Williams, who had been a fairly high official in the Treasury Department, on taxes, a lawyer from Michigan, and Mr. Williams said to me that

he and Mr. Edell had lived together at the University Club and they used to hang around evenings, talked about Mr. Edell's problems, and Mr. Edell, he wanted me to understand --

MR. BERLOW: I object to anything that Mr. Williams said unless at this time it is established that there is some agency relationship
131 between Williams and Edell.

THE WITNESS: I was about to stop.

BY MR. MILLER:

Q. Tell the Court first what relationship existed between Mr. Edell, the defendant, and Mr. Laurens Williams.

THE COURT: Now, this isn't something that Mr. Williams told you, is it?

THE WITNESS: Well, Mr. Edell called me and told me, he asked me to talk to Mr. Williams.

THE COURT: Then, you first have to tell us what Mr. Edell told you.

THE WITNESS: Mr. Edell hesitated --

BY MR. MILLER:

Q. What did Mr. Edell tell you about Mr. Williams' status?

A. He asked me to discuss his matter, the question of the income tax settlement with Mr. Williams because he didn't feel capable of making a decision and he wanted Mr. Williams to make the decision for him. And on that basis, Mr. Williams described himself as Mr. Edell's alter ego, he said:

"I am the client, you are the lawyer, I am acting for Mr. Edell, but not as a lawyer, I am acting for him as a principal and I am to make an intelligent decision and Mr. Edell is going to ratify it on the basis of your recommendation and I would like you to give me the facts on the situation."

132 That was the way Mr. Edell described Mr. Williams and that is the way Mr. Williams described himself.

THE COURT: Very well, under those circumstances, I will rule that the witness may say what was said in a conversation with Mr. Williams.

THE WITNESS: Well, Mr. Williams said that Mr. Edell was in a bad state of health and mind --

THE COURT: Well, now, just a minute. You ask the question.

BY MR. MILLER:

Q. Mr. Casey, tell us what the discussion, if anything, was you had with Mr. Edell or Mr. Williams concerning either the disposition of the proposed settlement or recommended settlement on the 1943, 1944, 1945 taxes and the 1946, 1947 taxes? A. Well, I recommended to Mr. Edell that he accept the settlement that had been worked out with the Internal Revenue Service on 1943, 1944, 1945. Mr. Edell said he wanted Mr. Williams to make that decision for him.

I reviewed the entire situation with Mr. Williams and Mr. Williams sent a Mr. Liles, an associate of his in his office, up and the two of them went over the whole matter, all the details and all the records, and then Mr. Williams went down to see Mr. Korr, the conferee of the Internal Revenue Service who was handling the matter in the Appellate Division, and Mr. Williams then told me that he thought that we had made the best settlement possible and that Mr. Edell should
133 accept it.

He recommended that Mr. Edell accept it, Mr. Edell did accept it and on that basis, the basis we had recommended, 1943, 1944 and 1945 were settled. We told the Internal Revenue Service we would settle those years on the basis that had been worked out.

Then it became time to get the 1946 and 1947. I had never had the books on 1946 and 1947, because Mr. Edell's accountant of the war years, Louis Appel, had died and Mr. Edell said that he had lost all his books. But he had new accountants in the postwar years, 1946, 1947 and on, they were a firm called Oppenheim, Payson, and somebody else, I haven't got the full name.

MR. BERLOW: Appel, the same name as the first name.

THE WITNESS: A different Appel, this was another Appel, he was Appel's brother. Anyway, Mr. Edell's matters there were in the hands of a very capable man whom I knew, named Arthur Dixon, and the understanding had always been that the accountants would continue to handle this thing at the field agent's, and if they needed any help, they would let us know. That was the understanding with Mr. Edell, in various conversations, after our original agreement, he said to have a talk with the accountants because that was the way to handle it and I agreed, because that is our practice, let the accountants carry it as far as they can.

134 In any event, after we had settled 1943, 1944 and 1945, Mr. Williams was given a power of attorney by Mr. Edell and this power of attorney ran to Mr. Williams, Mr. Brady, and myself. And Mr. Williams took the initiative, with Mr. Edell's concurrence and my concurrence, and I don't know whether the accountants settled 1946, 1947, or whether Mr. Williams did, or whether they did together. All I know is that we did not and we never claimed any compensation for 1946, 1947. By understanding and tacit consent, it was handled by the accountants and they concluded that part of the job.

BY MR. MILLER:

Q. I want to ask you clearly and specifically why did you or your firm not handle 1946, 1947 income tax? A. Because Mr. Edell told us to let the accountants handle it and never told us to take it on, and the accountants did conclude it.

Q. Did you have any conversation with Mr. Edell either about letting the accountants or Mr. Williams handle 1946 and 1947?

A. Oh, yes. I had that discussion with Mr. Edell as soon as I found out that among the papers I received, I had no records and no information about 1946 and 1947. I said, where is this? He said the accountants have it, let them handle it as far as they can, and I had enough on my hands and I agreed.

135 Q. Did you have any conversation with Mr. Edell about the fee contract or fee relationship regarding 1946 and 1947 income tax, if so, relate it. A. Well, we never discussed the fee, I just never billed for 1946, 1947, never felt -- never made any claim for compensation for those years. The final claim for what we had done was renegotiation and the taxes for 1943, 1944 and 1945.

Q. Can you give us the dates on which Mr. Edell told you not to handle 1946 and 1947, but to let the accountants or others do it, the day or dates? A. The first date was sometime in the latter part of August or the early part of September, after I had completed my review of the papers.

Q. Of what year? A. Of 1954, after I had completed my review of the papers that Mr. Amann had sent me and I told him I didn't have the 1946, 1947 information. He said, well, the accountants have it and let them handle it as long as they could. I meanwhile talked to the field, the --

Q. When subsequent to that time, if he did, did he tell you to let the accountants handle it and you were not to handle the 1946, 1947 returns? A. Well, this is a matter that rested the way it was left in August 1954 and stayed that way until we got the renegotiation out of the way and we addressed ourselves to the tax deficiencies, which was in the early part of somewhere in the middle of 1954 and Mr. Edell
136 reiterated -- by that time I had established a working relationship with Mr. Dixon and it wasn't true to say I didn't handle it, really, because I was supervising it.

MR. BERLOW: Objection, Your Honor, this isn't responsive to the question at all.

BY MR. MILLER:

Q. The question was, when, after the determination of the tax court and the renegotiation, if you did, did you have a conversation with Mr. Edell in which he told you not to handle the 1946, 1947?

THE COURT: What you want is the date, is it not?

MR. MILLER: The date.

THE WITNESS: Well, I can only estimate the time.

BY MR. MILLER:

Q. Your best recollection of the date following the renegotiation.

A. Sometime around, well, I recall that I met Mr. Edell in San Francisco in August of 1946 and we discussed the matter and I told him that --

MR. BERLOW: I object to what he told him, Your Honor.

THE COURT: The objection is sustained. The only question pending is the date.

THE WITNESS: Well, the best of my recollection, it was sometime in August of 1956, I was told, and again in the middle of
137 July or August of 1956, when we had the decision.

BY MR. MILLER:

Q. Now, one other matter, Mr. Casey, would you tell the Court the time that you spent handling Mr. Edell's problems, giving the amount of time and the reasonable value of your services therefor?

A. You mean the time of my office or my personal time?

Q. Well, first your personal time.

MR. BERLOW: Your Honor, I object to any testimony as to quantum meruit, the value of his services, in view of the fact that the suit is based upon a written contingent fee contract. It may be that Your Honor will --

THE COURT: Didn't you say yesterday that you were claiming that if they were entitled to anything, it would be on the basis of meruit?

MR. BERLOW: Yes. My view is, I am interested in saving time, it may be that Your Honor will rule that the contracts have been breached and are not enforceable and then there would be a question of quantum meruit and I would have no objection, assuming that is Your Honor's ruling, to recalling the witness and going into that proof. I am just interested in saving time at this time.

MR. MILLER: It isn't going to save time to recall a witness from New York, Your Honor.

138 THE COURT: Mr. Miller, you know, when you recalled him, you said you had a couple of questions.

MR. MILLER: Two questions, yes, ma'am, he made them a little long, but one question was 1946, 1947, and the second is the reasonable value of the services.

THE COURT: I will overrule the objection, he may answer.

THE WITNESS: I estimate that I spent 234 hours in all phases of this matter.

BY MR. MILLER:

Q. Can you tell us on what that is based, please?

THE COURT: How many hours did you say?

THE WITNESS: 234. It is based on an analysis of my diaries and an analysis of my correspondence and the records and files of the case, and on my recollection of the amount of time spent in court and on a number of trips, one trip I took to Washington, it is reconstructed.

BY MR. MILLER:

Q. Can you give us the basis of your reconstruction briefly, Mr. Casey, please? A. Yes, in 1954, I spent 20 hours with Mr. Edell, 6 hours with Mr. Amann, 4 hours with Mr. Dickson of the Oppenheim firm, the accountants, 5 hours with Mr. Weiss of the Internal Revenue Service, 3 meetings, 8 hours in the analysis of files and records, Mr. Edell's correspondence and records were left with us, 12 hours in the proceedings with relation to the escrow and order of Judge Kaufman
139 to get Mr. Edell's money released from the lien of the judgment which the Government had taken against him, about 16 hours in research of the law on its application to the Fine case, the French case and the Wolff case and its application to Mr. Edell's situation in this kind of work --

Q. Just a moment, now, that is for 1954? A. That is during 1954.

Q. Can you give me the total number of hours spent by you, necessary to Mr. Edell's matters in 1954? A. It amounts to about 81 hours.

Q. I believe it is 71, isn't it? Would you recheck your figures?

MR. BERLOW: Your Honor, if the witness is testifying from a memorandum, I don't have any objection to his doing that, but I think the memorandum should be marked for identification so that it can become a part of the record in this case.

THE COURT: I don't think it is entitled to be made a part of the record, but you may examine it at the proper time, if you want to.

THE WITNESS: This is a note I made myself.

BY MR. MILLER:

Q. Well, would you take your pencil and compute the number of hours you testified you spent in 1954? A. 81 -- wait a minute, I am sorry, 71.

140 Q. Now, take the next year, tell us the number of hours in each category and then give a total for that year. A. 1955, 10 hours, mostly on conferences and correspondence and telephone calls with Mr. Edell. 1956, there were 8 hours of interviews with witnesses, there were 22 hours with Mr. Edell, there were 10 hours with meetings with the Justice Department, there were 16 hours in the preparation of the case, there were 10 hours in interviews with witnesses in Washington, there were 24 hours in the trial of the case and the work surrounding the trial after the court closed, and so on. There were 40 hours on the initial tax court brief --

Q. 40? A. Yes, 40. 10 hours on the reply brief, there were 6 hours on the computations and the adjustment of the credit, the tax credit and getting the money out of escrow, and there were 12 hours on a trip to Washington. And I want to modify my earlier testimony, because I note I did not include 5 trips to Washington made during 1954, when I had to come down and have conferences with the Justice Department and the renegotiation people looking toward the settlement.

Q. How many hours should be added to the 71 hours you testified to in 1954? A. That is 30 hours in 1954 and 10 hours in 1955 -- 32 hours in 1954 and 8 hours in 1955, there was one trip early in 1955.

Q. All right. Then the total hours for 1954 as corrected --

141 A. Become 103.

Q. -- Would be 103 hours. For 1955 as corrected would be --

A. Would become 18.

Q. And would you figure the total hours in 1956? A. 158.

And the total is 274.

Q. Wait a minute, let's get 1956 first. A. 158 is 1956.

Q. 158 for 1956? A. Yes.

Q. Did you spent any time in 1957? A. Yes, I spent --

Q. By the way, Mr. Casey, may I ask, wasn't 1957 the year in which the hearing was held in the Tax Court? A. No, that was in 1956.

Q. The opinion was handed down in June of 1957. Did it go over that long? A. Yes.

Q. I see. May of 1956, I am sorry, you are correct. Do you have any time beyond 1956 for efforts on behalf of Mr. Edell for the matters in controversy here? A. Yes, in 1957, I spent 6 hours on the adjustment of the credit in escrow which I put in 1956, that was in 1957. And the trip to Washington, two trips to Washington, 12 hours were in 1957 when I went down there to try to get them, at Mr. Edell's request,

142 to try to get the Justice Department to take some of the money in 1957 and some in 1958 for Mr. Edell's tax convenience, so I had 20 hours on that in 1957, and I had 10 hours in 1957, beginning the handling of the tax matter.

Q. What is your total number of hours for 1957? A. It is 28 hours in 1957.

Q. Does that, however, include an item or items from 1956?

A. Yes.

Q. Make the correction, please. A. The correction, 8 hours are shifted from 1956 to 1957, so I had 140 in 1957.

Q. You shifted how many hours? A. 18 hours, the trip to Washington and the adjustment of the tax credits.

Q. So, therefore, 1956 is reduced from 158 by 18 to 140, is that correct? A. Yes, sir.

Q. 140 for 1956. Then, give me the corrected total of hours for 1957. A. 28 hours is 1957.

Q. Now, can you give me the total number of hours for the four years of time spent on Mr. Edell's matters? A. Well, it is more than that, there was time in 1958 because that is when we finally closed out the tax matter and that is when we had the conferences with Mr. Williams.

143 Q. All right, give me the time, then, in 1958. A. 1958, I spent about 36 hours on the tax matter and in meetings with Mr. Williams and Mr. Liles, Mr. Williams' associate, and a certain amount of correspondence and communication with Mr. Edell.

Q. So, your total for 1958 would then be what? A. 36.

Q. 36? A. Yes.

Q. Do you have any additional time beyond 1958? A. No, I think we sent him a bill around 1958. My additional time has been in trying to collect the --

Q. All right, we won't go into that. Now, would you compute for us the total number of hours you spent for the years 1954 through 1958, please? A. Yes. It comes to 320 hours.

Q. Is that 325? A. Well, my calculation here is 320.

Q. All right. During those years, Mr. Casey, what did you charge for and what was the reasonable value of your time as an attorney in this type of matter? A. Well, my regular time rate was \$60 an hour in those years.

Q. Did you regularly charge and receive fees at the rate of \$60 per hour for work of similar type and character in the community in which it was performed in the years that you have testified?

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A. When I worked on a time basis, that is what I charged and that is what I was paid.

Q. Would you tell us, then, the reasonable value of the services totaling 325 hours at a fair and reasonable rate? A. 320 is \$19,200.

Q. \$19,200. Mr. Casey, were there any employees in your office, whose salaries you paid, who performed services for Mr. Edell, whose time in such performance is known to you? A. Yes.

Q. Now, first of all, does that include Mr. Brady? A. Well, there was Mr. Benedict, Mr. Brady and Mr. Sopenheim.

Q. Let's exclude Mr. Brady, because he is here and will testify. A. All right.

Q. Do you have information as to the amount of time and the fair rate for such time of any other employees, besides Mr. Brady, spent necessarily on Mr. Edell's problems? A. I reviewed the record, I have talked to Mr. Benedict and my estimate and his estimate is that he spent 90 hours during the year 1954.

Q. And what was the reasonable hourly rate for Mr. Benedict's services at that time? A. Mr. Benedict, we charged, we billed his time at \$30 an hour.

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Q. Would you tell us just briefly what his qualifications were upon which his professional charges and services were valued as an attorney? A. He was a lawyer of 25 years' experience, he had worked in the New York office of the Renegotiation Board, he had a great deal of experience in tax and corporate financial matters and that was the regular rate on which we billed for his time.

Q. Is the value of his services on 90 hours at \$30 an hour for a total of \$2,700? A. That is the way I would calculate it, yes.

Q. Did you have any other employees except Mr. Brady who worked on this matter? A. I had Mr. Sopenheim, who was not an employee, Mr. Sopenheim was employed on a free lance basis. We paid him on the job or on an hourly basis or a daily basis, depending upon the work, and he spent 16 hours going through Tax Court Dockets and getting information and making up tables for me on renegotiation cases involving service figures and distributors, and I billed Mr. Sopenheim's time at \$30 an hour. He was also a lawyer of 15 years' experience, graduated from Columbia Law School.

Q. What skill did he possess in the field in which he was working?

A. Well, he had an accounting background, he had been Associate
146 General Counsel of the War Stabilization Board, Wage Stabilization Board, during the Korean war and he was very familiar with administrative procedures and very skilled in research.

Q. Is the fair and reasonable value of his time for 16 hours at the rate of \$30 an hour or a total of \$480 for work necessarily performed on behalf of Mr. Edell? A. Yes.

MR. MILLER: You may examine.

CROSS EXAMINATION
(Resumed)

BY MR. BERLOW:

Q. Of course, Mr. Casey, at no time did you ever discuss with Mr. Edell your hourly charge of \$60 an hour, did you? A. Oh, yes.

Q. When was it? A. Well, Mr. Edell came out --

Q. Would you give a date, please? A. Yes, it was in July, the early part of July, 1954, when he came out and asked me to take this particular matter on a contingent basis, because he couldn't pay my time charge, he didn't want to pay it.

Q. And at that time, of course, the Socklo matter was not mentioned, was it? A. Oh, yes, that was part -- the Socklo attorney's lien matter was not mentioned, but the real estate matter and the

147 Justice Department lien was part of the problem. I had already been working on that problem. I also told Mr. Edell --

* * * * *

MR. BERLOW: I submit that his answer is not responsive.

THE COURT: Well, we will see.

Read the question, please, and we will hear the answer as far as it went.

(The record was read by the reporter as follows:)

"Q. And at that time, of course, the Socklo matter was not mentioned, was it?

"A. Oh, yes, that was part -- the Socklo attorney's lien matter was not mentioned, but the real estate matter and the Justice Department lien was part of the problem. I had already been working on that problem. I also told Mr. Edell --"

THE COURT: That is where the interruption was.

THE WITNESS: The question was whether I had told Mr. Edell my time charges.

BY MR. BERLOW:

148 Q. No, the question was, at that time in 1954, was the Socklo matter mentioned, and I understand from your answer that it was mentioned. A. It depends on what you mean by the Socklo matter.

Q. I mean any matters -- was any matter in which Mr. Socklo was involved mentioned at that time, and would you please answer the question yes or no? A. Well, I can't answer the question yes or no.

Q. Then, we will go on to another question. In your time charges, you have included a charge for matters in which Mr. Socklo was involved. A. No, I have not.

Q. In your prior testimony, when Mr. Miller just inquired, would you go through that memorandum you have in front of you and see if that doesn't refresh your recollection that, about three minutes ago, you made reference to hours spent on the Socklo matter.

A. No, I don't think I did. I made reference to hours spent in releasing Mr. Edell's money from the lien of the Justice Department, in which we had to go to court with Judge Kaufman in the Southern District, and that is not the Socklo matter. The Socklo matter involved the attorney's lien and we excluded that.

Q. And that has been excluded? A. Yes.

Q. From this hourly calculation? A. Yes.

* * * * *

151 Q. Are you now asserting a claim in this case for services rendered in any matters in which Mr. Socklo was involved? A. Yes, as part of the quantum meruit claim, I am including matters in which Mr. Socklo was involved, upon which I did not know Mr. Socklo was involved, and these are matters involving my dealings with the Justice Department and the District Court of the Southern District of New York, in which I had to get an order to release Mr. Edell's money from the lien of the Justice Department's judgment and --

Q. So, when you said -- A. And -- I haven't completed my explanation -- and insofar as I subsequently had to deal with Mr. Socklo directly, in negotiating with him for the release of those same funds after he had later asserted an attorney's lien and I had to deal with him and I had to prepare an agreement on the basis of which we settled the matter, I am not raising any claim with respect to that matter, that is the matter I testified about on my deposition, that is the matter for which Mr. Edell paid me separately \$500.

152 Q. So there was -- when I made reference in my question in the deposition to the Socklo matter, as I referred to it, there were two Socklo matters and I failed to mention both? A. The first matter wasn't a Socklo matter. It was a Justice Department matter. It was an Edell matter, it was Edell v. Justice Department, Socklo wasn't there, he wasn't a party to it.

Q. Have you reviewed the pretrial order in this case, have you ever read it? A. The pretrial order?

Q. Have you read any of the pleadings that have been filed in this case? A. Yes, I have read the pleadings.

Q. And in any of the pleadings, including the complaint, the pretrial statement prepared by your counsel and the stipulations mentioned therein, the pretrial order prepared by the pretrial commissioner of this court, was it ever brought to your attention that there is mentioned in any of those documents any matters other than the renegotiation matters and the matters arising from the income tax deficiency? A. No.

Q. Now, to go on to another matter, Mr. Casey --

THE COURT: Before you leave that matter, I would like to ask you this, you say that this was a matter that related to Mr. Edell and the Government. Does that come within the scope of either the renegotiation or the income tax returns for 1943, 1944 and 1945?

153 THE WITNESS: Well, it was treated as part of the renegotiation problem, because the judgment which the Government got against Mr. Edell on the basis of his renegotiation liability was a judgment which was tying up this property and I had begun to work on it and had worked on it at Mr. Edell's request, before we ever had an agreement and I continued to work on it as part of the total agreement. And I told Mr. Edell that I would have to have a \$2,500 retainer to justify that, some of the work I had already done and that was included in what I had already done. It was related to the renegotiation matter and we treated it as such.

THE COURT: Go ahead.

BY MR. BERLOW:

Q. Did you bill Mr. Edell separately for that matter? A. No.

Q. Did you receive a \$500 check from Mr. Edell on February 23, 1955, for services rendered in the Socklo matter? A. That was for the attorney's lien as I testified yesterday.

Q. It was Socklo's attorney's lien, wasn't it? A. Yes.

Q. Would it be fair to refer to the matter in which Mr. Socklo's attorney's lien was involved as the Socklo matter? A. That would be certainly the way to describe the matter.

154 Q. And the \$500 was paid for that matter. A. Yes.

Q. And you rendered a bill in that matter? A. The attorney's lien, yes.

Q. And you rendered no other bill in connection with that matter since that time? A. No.

Q. Now, as to other payments made by Mr. Edell, you testified as to certain disbursements, and there is a balance due on the disbursements of \$1,035, is that correct? A. Yes.

Q. Now, in the course of this trial, there was offered or exhibited a transcript of the trial that took place before, in the Tax Court? A. Yes.

Q. Was that transcript paid for? A. Yes.

Q. Who paid for it? A. Mr. Edell paid for it.

Q. Now, did you bill him for the disbursement in connection with this? A. Yes.

Q. And did he pay that bill? A. Yes.

155 Q. Now, in connection with the expert witnesses that were brought down, do you recall their names? A. Yes.

Q. What were their names? A. Mr. L. Cordes was one and Mr. Porter was the other.

Q. Did they submit a bill? A. \$300 a piece.

Q. Was it paid? A. Yes. I paid one and Mr. Edell reimbursed me, and he paid one directly.

Q. Isn't it a fact that Mr. Edell has paid, either directly to the parties involved or reimbursed you, expenses in the tax litigation in the approximate sum of \$2,000? A. I don't think it amounts to that much, I know he didn't pay all the expenses I billed.

Q. How much does it amount to that he paid? A. Well, I can only estimate now. I don't think it -- I know he paid for the transcript because I asked him to, I know he paid for the two witnesses which was \$600, the transcript was maybe \$300 and he paid for my hotel expenses in Washington when I was on trial, and that is all I can recall that he paid.

Q. You wouldn't deny that it was as much as \$2,000?

A. I wouldn't deny it? No, I wouldn't deny it, I just don't know that it was that much, but the records will certainly show, the records are around.

156 Q. These disbursements that are the subject matter of this particular litigation, which are mentioned in your complaint, in the pretrial order and in the pretrial statement, I am talking now about those disbursements and which are set forth in a statement dated October 7, 1957, now, let's confine ourselves in this discussion to those disbursements. Let me show you this copy of that and I will ask you this: There are no transcript charges involved in that, are there?

A. Because they were paid, this was a bill, this is a later bill, there was a previous bill in which the transcript charges were and it was paid.

Q. The answer to my question is no, then, there are no transcript charges? A. Not in this bill, no.

Q. There were no transcript charges in that bill? A. Not in this bill, no.

Q. And there are no charges for witness fees in that bill?

A. They had already been paid.

Q. The answer is no? A: No.

* * * * *

157 Q. Now, Mr. Casey, you made reference to a civil fraud penalty. Now, my question calls for a date, my question will call for a date and I would appreciate it if you will give me the date. When, in what month and what year, was it first brought to your attention that the Internal Revenue Service was going to assert a civil fraud penalty against Mr. Edell? First, tell me the month, then follow it by giving me the year, if you will. A. August, 1954.

Q. And that was after Mr. Edell had executed an agreement employing you, is that correct? A. Yes.

Q. And my next question is, who, and would you give me the name of the person, who brought that to your attention? A. Mr. Weiss of the

158 Internal Revenue Service.

Q. And then from August of 1954 until this matter, the income tax matter, was settled -- when was it settled? A. It was settled in --

Q. 1958? A. About February, January or February of 1958.

Q. How many times was the civil fraud penalty, just give me a number, if you will, as you best recall, how many times was the civil fraud penalty mentioned by any Government officials in the interim?

THE COURT: You mean to him?

MR. BERLOW: To him.

THE WITNESS: To me, during that entire period, it was mentioned directly, by a Government official, twice -- three times.

BY MR. BERLOW:

Q. And during that period of time -- and that was orally mentioned? A. Oh, yes.

Q. During that period of time, how many written communications were received from the Internal Revenue Bureau? A. I can't recall that any were.

Q. There was, however, originally -- well, on October 8, you received a letter from the United States Treasury Department, Bureau of Internal Revenue, Bureau of Practice, there was no mention, of
159 course, in that document of a civil fraud penalty, that wouldn't be appropriate, would it? A. No, this is informal.

Q. In the original assessment deficiency letter, there was an original deficiency letter prepared by the United States Government that was sent to Mr. Amann or Mr. Pittman or one of his accountants, but later came to your attention, was there not? A. There was a protest and there was the Revenue Agent's report, yes.

Q. How many pages was the Revenue Agent's report? A. I can't tell now, I don't have a copy.

Q. Would you describe it as voluminous? A. It was eight or nine pages.

Q. In any place in any of those eight or nine pages, was any mention made of a civil fraud penalty? A. I don't believe so.

Q. Now, thereafter, the deficiency was settled and another eight or nine page document was -- A. The deficiency was settled?

Q. The income tax matter was settled, the matter covering income taxes for 1942, 1943 and 1945 was settled and another multi-page document was received from Internal Revenue, do you recall that?

A. Yes.

Q. And did you read that? A. Yes.

160 Q. Do you have any recollection whether, in any of the pages of that document, there was any mention of a civil fraud penalty?

A. There was none.

Q. Now, you say that the civil fraud penalty was mentioned first in August of 1954, but no mention was made in that, of course, of the civil fraud penalty, in the written agreements you entered into with Mr. Edell, was there? A. I didn't know that it was asserted at that time, no mention was made.

Q. When they were asserted, as I understand your testimony, that placed a greater burden on you so far as your work was concerned, did it no? A. Oh, yes.

Q. But you did not see fit to amend the agreements that you made with Mr. Edell in that connection? A. No, because it hadn't been asserted in the form of a deficiency. It was recommended by the agent to the conferee and the conferee told me he had the recommendation from the agent.

Q. Did he show you a document? A. No, it is a confidential report that goes from the agent to the conferee and the procedure to the Internal Revenue Service.

Q. You never saw that? A. Nobody sees it, no taxpayer sees it.

161 Q. Have you ever seen a writing -- A. No.

Q. I haven't finished my question. You have handled cases in which civil fraud penalties have been asserted, have you not? A. Yes.

Q. And are these civil fraud penalties, upon some occasions, maybe rarely but upon some occasions, asserted in writing? A. In the final deficiency, yes, in the final assertion of a deficiency, which we never reached.

Q. You have seen many of those assertions of -- A. No, I haven't seen many of them, I have seen them. I have had very little experience with fraud.

Q. But you have seen them? A. I have seen assertions of fraud in others.

Q. And you know it is the practice of Government officials handling these matters, that when they assert a matter as consequential as civil fraud, they assert it in writing, do they not? A. I have only seen it asserted in ninety-day letters.

Q. That is a writing, is it not? A. That is a writing which was never issued in this case.

Q. So the answer to my question is, when Government officials are going to assert something as serious as a civil fraud penalty
162 against a citizen taxpayer, they do it in writing, don't they, so the taxpayer will be advised of the charge against him and be in a position to prepare for it? A. You would have to tell me the time as of which you want me to answer that question.

Q. No, I won't tell you that, I just want to ask you this question. No Government official ever, to your knowledge -- let me reword the question. You have never seen any written statement signed by any Government official asserting a civil fraud penalty against Mr. Edell at any time, have you? A. I have not.

Q. And your agreement with Mr. Edell does not include any mention of a civil fraud penalty, does it? A. No, it does not.

Q. But you are asserting in this court at this time that you are entitled to compensation for representation as a lawyer for work done on behalf of Mr. Edell in connection with a civil fraud matter, are you not? A. No, I am not.

Q. You are making no charge for any of the matters in connection with the civil fraud assertion, are you? A. Well, that is a difficult question to answer.

Q. You cannot answer that question? If you can't answer it --
A. I want to answer it accurately. I want to answer it accurately.

* * * * *

163 THE COURT: Well, the witness has already testified, as I understood it, that all he was told was that the agent had recommended something or had made some report on the subject to the conferee and that the matter was settled. I mean the tax liability was settled, so I don't know why we are spending a lot of time in going into this.

MR. BERLOW: Well, I think it is clear that there were no services rendered for any fraud matter involved. If I understand Your Honor correctly, then I agree, there is no sense in pursuing it any further.

BY MR. BERLOW:

Q. Now, Mr. Casey, there did come a time when Mr. Edell first spoke to you in December of 1953, and after that time, it was brought to your attention that a settlement offer had been made by the United
164 States Government, is that so? A. Yes.

Q. And you had an opportunity to read and examine that settlement offer, did you not? A. Yes.

Q. And after you had read and examined that settlement offer, you drafted in your office a written contract to provide for compensation for you in connection with the tax case of Mr. Edell's, did you not?
A. Yes.

Q. And the contract was based, was it not, upon the settlement offer that had been made? A. Yes.

Q. And thereafter the first contract which was drawn and executed, was destroyed, was it not? A. I don't recall that it was. I testified yesterday to that.

Q. Yesterday I tried to refresh your recollection by reading from page 9 of the deposition and let's see if this very brief portion refreshes your recollection. I asked you, page 5 of the deposition, I asked you:

"Q. Was there an agreement dated July 15 that you entered into?"

And your answer was:

165 "Well, I can't recall the date, but the facts are that Mr. Edell pressed me to take this case, his case, and I was aware he had difficulty with his other lawyers and he came to my home on Saturday and talked to me at great length and I agreed to go into it on the basis of a \$2,500 retainer."

Mr. Dickey said:

"Would you speak a little louder, please?"

And you said:

"A \$2,500 retainer plus 30% of what I could save for him and we did have an agreement along those lines which embodied the tax problem and the renegotiation problem. And then it occurred to me that I had to file the contingency agreement with the Internal Revenue Service under the rules and they wanted to see a substantial retainer. So as not to confuse them, I recommended to Mr. Edell that I was taking it on a quoted basis on his figures, that we break it into two agreements, one, a straight 30% on the renegotiation and the other, \$2,500 plus 30% of the saving on the tax. There was no requirement to file the renegotiation. I wanted to accept the retainer on the tax problem, that is how there was a change and we did change the agreement. There was a predecessor agreement which superseded that. I don't have copies of it."

Does that refresh your recollection, Mr. Casey, that there was a predecessor agreement? A. No, it doesn't. I testified yesterday --

166 Q. I would like to finish my question. Does that refresh your recollection that you did change the agreement and there was in fact a predecessor agreement which superseded the first agreement?

A. It refreshes my recollection that there was an agreement, it was broken into two agreements. It does not refresh my recollection and I don't know now that there was a preceding written agreement. There may have been and there may not have been, I don't recall that there was.

Q. This chart which I am going to refer to has been marked as Plaintiff's 18 for identification and, Mr. Casey, you have had an opportunity to read that chart and study it? A. Yes.

Q. And you understand it? A. Yes.

Q. Now, this chart represents the calculations made in determining the fee claimed on the income tax matter, is that correct? A. Yes.

Q. And the amount claimed by the Government, that expression which appears on the chart, you would say, I think it has already been agreed that that language, if it is to be related to the agreement which you entered into with Mr. Edell, that that language more accurately should be "proposed deficiency," should it not? A. Yes.

~~167~~ Q. It should say proposed deficiencies after deduction of renegotiation income that was repaid by Mr. Edell, is that correct?

A. No, I would say after elimination of the income, rather than deduction of the income.

Q. Elimination, but in the process of eliminating it, you would subtract it, would you not? A. Subtract it from his gross income.

Q. And then you would take his tax rate, whatever bracket he was in, is that right? A. Yes.

Q. And by arithmetical computation, you would arrive at this as being the tax payable, that the Government is claiming as to tax payable, is that correct? A. Yes.

Q. Now, going to the "Amount Determined," the language used in the contract which we should relate to that so that we have the contract in mind, would be -- this would be called "Final Settlement," would it not? A. Yes.

Q. Now, the difference which you calculated at \$26,712, in this year, 1943, the difference is the result, is it not, of subtracting from the income, upon which the proposed deficiencies were based,
168 approximately \$14,000 expenses? A. That accounts for the difference between \$16,406 and \$14,040, yes.

Q. And that is in reference to 1943? A. That is right.

Q. And in 1944, the difference between the proposed deficiency, to use the contractual language, and the settlement is again arrived at by subtracting \$14,000? A. That is correct.

Q. And the same thing is true insofar as 1945 is concerned?
A. Yes, that is correct.

Q. And there is nothing else that accounts for the difference at all? A. That is right.

Q. Now, at the time Mr. Edell came to you and showed you the Amann proposal, the Government proposal that Mr. Amann had had, at the time he showed you that, again the Government had proposed in 1943 approximately \$14,000. You recall that? A. You mean the Government had proposed -- no, I don't know what you are talking about.

Q. In the proposed settlement of the renegotiation matter, the Government had, for each year, in the same manner as you had set this up, the Government had for each year inserted an amount which it was willing to allow for expenses. Of course, this -- A. No, it wasn't a
169 matter of willing to allow for expenses. They proposed a dollar settlement of \$183,000. In arriving at that settlement, they made certain assumptions of expenses and value of services, and other items.

Q. Well, I am only asking you about the expenses. A. Yes, the assumptions.

Q. I am only calling your attention to -- A. The assumptions, yes.

Q. The assumptions -- I understand that you have already testified that these assumptions were based upon no records, that these were just assumptions, I understand. A. I didn't testify that.

Q. Excuse me then, let's call it assumptions. A. All right.

Q. These assumptions as to expenses, let's just call it that, right? A. Yes.

Q. And the total expenses that was ultimately arrived at was \$42,000, isn't that right? For the three years, fourteen times three, \$42,000? A. In the Tax Court decision?

Q. Yes. A. Yes.

Q. And in the original proposal of the Government that you had before you, when you entered into this agreement with Mr. Edell,
170 the total expenses proposed were \$60,000, isn't that correct?

A. About that, that was the total assumed, yes.

Q. Now, if you inserted those expenses in this column that you have designated, "Amount Claimed by Government," then this figure would be substantially less than \$124,000, would it not? A. If the Government had accepted those figures, yes. If the tax people had accepted those figures and those figures were placed in the calculation, I would say the difference would be something like \$9,000 in reduced tax liability.

Q. If you inserted \$60,000 in this column which is what you call "Amount Claimed by Government," and what I call "Proposed Deficiencies," isn't it a fact that you would get a figure that is even less than the \$97,000? A. If the Government had allowed a deduction of \$60,000 instead of a deduction of \$42,000, you would have had a reduced tax liability, yes.

Q. And there would have been no saving to Mr. Edell, you would have effected no saving? A. Oh, I would have had a larger saving.

Q. No, no. If the 60 was inserted in this column -- A. But the 60 wouldn't be inserted in that column, it would be deducted from the second column. The 42 is deducted from the second column.

171 Q. You have deducted no expenses from this column. A. The Government claimed that the Government didn't allow expenses in the claim they made, these are additional expenses over what they did allow. The 42 is in the second column, not the first column.

Q. When you first read Mr. Amann's proposal as to settlement of the renegotiation matter, there was an allowance of \$60,000 for expenses, was there not? A. In the proposed settlement of the renegotiation matter, there was an assumption that \$60,000 would be allowed for settlement purposes, yes.

Q. And when you first entered into your agreement with Mr. Edell, there was only one agreement, wasn't there? A. In discussion, we talked about a single basis on which I would take it, yes.

Q. And the basis was the proposed settlement of the renegotiation matter, was it not? A. Oh, no. The basis was the settlement of the tax matter and the settlement of the renegotiation matter.

Q. There was no proposed settlement on the tax matter, they asserted that all this income was taxable and made no allowance for expenses, did they? A. I think they allowed some deductions.

Q. But when it came to the final determination of the tax matter, the only expenses that were in fact allowed were the same
172 expenses that you had stipulated in the renegotiation matter, to the penny? A. The only additional expenses that were in fact allowed were those that the Tax Court had determined and that were embodied in the Tax Court decision by stipulation, as a result of our stipulation, that is.

Q. Is it your testimony that in calculating this tax, there were expenses allowed in excess of \$14,000? A. I think there were, yes.

Q. Would you tell me what they are? A. I don't know what they were, there were credits, there were the personal exemptions, and I believe there were some ordinary expenses not relating to Mr. Edell's business that were allowed, but they didn't amount to much.

Q. Let's refer again to this deposition and see if the reading of this doesn't refresh your recollection: that the only saving that was accomplished -- A. I just testified that, the only saving that was accomplished was the \$42,000, that is right.

Q. By taking the expenses that were set forth in the stipulation and deducting them from the deficiency asserted? A. That is right.

Q. And if you started off with the expenses that were allowed by Mr. Prentice in his settlement proposal to Mr. Amann, if you started from that figure, you didn't do as well as Mr. Amann's original proposal, did you? A. How can I have started from that figure? I couldn't have started from that figure.

Q. You had the figure before you, did you not? A. The figure wasn't before the tax people.

Q. But it was before you, was it not? A. Oh, yes.

Q. And it was before Mr. Edell, was it not? A. Oh, yes.

Q. And those figures, those expense figures were the basis of the understanding that was incorporated in the original agreement that we don't know whether was destroyed or not? A. It was never incorporated in the original agreement.

Q. You don't have that agreement? A. It was never a part of any agreement. These expenses were never a part of any agreement. The only thing that was a part of the agreement was the net result of \$183,000 and the tax deficiency which the Government asserted in two separate proceedings.

Q. Let me ask you this, at the time, Mr. Casey, that you undertook to represent Mr. Edell, there was a petition filed in the Tax Court of the United States, was there not, by Mr. Amann? A. No, by Pittman & Roberts.

Q. And that is a court of record of the United States, is it not?

174 A. Yes.

Q. The Tax Court? A. Yes.

* * * * *

Q. Let me ask you this question, very simply: Isn't it a fact, Mr. Casey, that at the time you entered into the original agreement with Mr. Edell, you were well aware that any stipulation entered into in the Tax Court of the United States as to expenses, would be legally binding upon Mr. Edell insofar as his income tax deficiencies were concerned, because that stipulation would be between the same parties and would be made in a court of record and, consequently, would be res judicata. Did you know that or not? A. I advised Mr. Edell that was one of the reasons for taking the stipulation. I couldn't prove as well as a stipulation in court, either in the tax proceedings or the renegotiation proceedings, the main issue in the tax proceedings was the family partnership.

175 Q. Isn't it a fact, Mr. Brady, that the original agreement that you entered into, let's put it this way -- Mr. Casey, there did come a time, did there not, when you did receive a communication from the United States Treasury Department on October 13, 1954, advising you of certain requirements insofar as contingent fees were concerned? A. Yes.

Q. Now, at the time you received that, you had a contingency arrangement with Mr. Edell, did you not? A. Yes.

Q. And that contingency arrangement was in accordance with the practice of the Tax Court, was it not? A. Yes.

Q. Had you filed it with them? A. I filed it with the Committee on Practices. You are not required to file it with the Tax Court.

Q. You filed it with the Office of the Director of Practice? A. Yes.

Q. And when did you do that? A. Shortly after it had been executed, I would say sometime in -- I don't know, August, September.

Q. But this letter of October 13, which your counsel has offered into evidence and it has been marked as Plaintiff's Exhibit 10, states that "this office is in receipt of your letter of October 8, 1954, and the attached copy of the retainer fee agreement for your representation

176 before the Treasury Department of Harry Edell." Does that refresh your recollection? A. I guess that is when I filed it.

Q. October 8? A. I guess that is when I filed it, yes.

Q. But it was dated July 28? A. Yes.

Q. Isn't it a fact that you entered into an agreement with Mr. Edell covering both the renegotiation matter and the income tax matter, which agreement provided that you must improve upon the expenses which Mr. Amann had received from the Government, and that you changed that agreement on October 13 -- on October 8th and advised Mr. Edell it was only a technical change and it would not change the understanding that you had with him? A. No, that is not a fact.

Q. Did you have a conversation with Mr. Edell as to the practice, as to the rules of the Office of the Director of Practice? A. Yes, I told Mr. Edell that is why I was going to embody our agreement in two agreements, one dealing with renegotiation and one dealing with the tax deficiencies.

Q. And didn't you tell him at that time, also, that even though you were going to change the agreement because it was not in accordance with the rules, that nevertheless the \$60,000 expenses which Mr. Prentice and Mr. Amann had included in their proposal, that that
177 \$60,000 would be the starting point? A. Certainly I did not, there was never any mention of expenses being in the starting point. The starting point was the claims, the assertions the Government was making against Mr. Edell.

Q. The settlement proposal was the starting point, was it not? A. No -- yes, the settlement proposal, the net result, the \$183,000 renegotiation, the claims.

Q. When Mr. Edell came to you, he had been represented by Douglas Amann, whom you understood and we all understand to have been a very competent lawyer? A. Oh, yes.

THE COURT: Had he gotten any proposition from the Treasury Department of settlement?

THE WITNESS: No. The Treasury Department felt that the tax deficiencies could not be settled until the renegotiation claim had been finally determined.

MR. BERLOW: Is Your Honor finished?

THE COURT: Yes, I have finished.

BY MR. BERLOW:

Q. The only settlement offer that you had was the renegotiation settlement offer? A. Yes.

178 Q. And that, I think you testified three or four times, that was the basis of your discussion with Mr. Edell? A. Yes.

Q. And it was based upon that, that the original agreement was entered into? A. Yes.

THE COURT: Well, that proposition was this \$183,000, was it not?

THE WITNESS: Yes.

THE COURT: And this \$183,000 was supposed to be the amount after the deduction of what the Government proposed to deduct? I mean, the deductions had been made before this \$183,000 was determined?

THE WITNESS: In arriving at the \$183,000 for purposes of settlement, the Government made a calculation which was submitted, which allowed certain deductions and allowed certain value to Mr. Edell's services and the balance was \$183,000.

* * * * *

BY MR. BERLOW:

179 Q. In reference to -- there was this original proposal that Her Honor inquired about, which had reference to excess profits of \$183,000, is that correct? A. That was the basis on which it was settled.

THE COURT: I don't think I designated anything as an original proposal, I simply asked about --

MR. BERLOW: The figure of \$183,000.

THE COURT: Yes.

BY MR. BERLOW:

Q. Was that in the settlement proposed by Mr. Prentice on December 16, 1953? A. Yes.

Q. Now, then, that was the conclusion that was reached after some other calculations were made, isn't that correct? A. Yes.

Q. And I show you this document which was marked at the time of the deposition as Defendant's Exhibit No. 3 and ask you whether or not, included in the calculations used in arriving at the \$183,000 figure, were there or were there not certain figures used as to expenses? A. Yes, there were.

180 Q. Now, those expenses that were referred to in that settlement proposal were in addition to certain expenses which it was admitted were non-renegotiable. In other words, let me phrase it another way, there were certain expenses which no one ever contested at any time, for example, I show you this item here, this \$600 and on top of it, it says non-renegotiable expenses, they were conceded as being expenses at all times, were they not? A. Well, for the purpose of this allocation, they were, yes.

Q. Then, in 1943, there were these renegotiable expenses of \$14,400? A. Yes.

Q. In 1944, there were renegotiable expenses of \$18,300? A. Yes.

Q. In addition to \$1,700 of expenses which everybody conceded were non-renegotiable, right? A. I don't know if anybody conceded it.

* * * * *

Q. There is \$18,300 in Mr. Prentice's settlement proposal for 1944, is that right? A. Yes.

Q. And for 1945, the expenses were \$20,700? A. Yes.

Q. And there were legal expenses of \$6,667 and \$4,500?

A. Yes.

181 Q. Now, those were the expenses that were in the settlement proposal that you had before you, before you commenced your discussions with Mr. Edell as to your fee? A. Yes, they were the expenses on which the settlement proposal was based.

Q. Now, there is no question that those expenses were contained in the settlement proposal as to the renegotiation matter? A. They were the basis for the proposal, yes.

Q. The basis for your fee agreement? A. They were the basis for the proposed settlement of the renegotiation matter on which my renegotiation retainer was based.

Q. But the first retainer was not a renegotiation retainer, it was a retainer for all the tax matters, was it not? A. Our first general understanding was that it covered both the tax matters and the renegotiation matter, as did the two agreements.

Q. But then there came a time when the first proposal was divided into two separate proposals? A. Yes.

Q. And the separate proposal, which is attached to the complaint, which has reference to the proposed deficiencies, it clearly now makes no reference to the deduction of the expenses as proposed by Mr. Prentice in the renegotiation matter? A. Neither retainer made any reference to the deduction of expenses.

182 Q. Your testimony is that when Mr. Edell showed you this, when you and he discussed this proposed settlement agreement, that Mr. Prentice had proposed, that at the very beginning that settlement proposal was segregated so as to be applicable only to your renegotiation retainer, is that right? A. Because the renegotiation arrangement was based upon the settlement, which was \$183,000 in net amount.

Q. The answer to my question is yes. A. Yes, that is right.

Q. And even though there was one agreement and only one agreement, that one agreement that you entered into with Mr. Edell had some separate reference to expenses on the income tax matter? A. No, that one agreement had no reference to expenses. The one agreement was made up of two parts and each was based on the net result.

Q. The only expenses that were before you at that time were the expenses that we have just gone over and which totaled somewhat in excess of \$60,000, those are the only expenses that were discussed, were they not? A. No expenses were discussed. The only thing that was discussed was the net deficiency, the net claim of the Government.

183 Q. What was discussed was the settlement proposal that Mr. Amann had received, isn't that right? A. The figure of \$183,000 was discussed.

Q. And you were to improve upon that settlement? A. My compensation was to be based on my ability to improve on that offer.

Q. And the offer, in turn, was based upon the Prentice proposal? A. Well, the offer was the Prentice proposal.

* * * * *

184 Q. Now, you did enter into, in the course of the tax case, a stipulation agreeing to \$14,000 a year or \$42,000 expenses and not sixty? A. I agreed to \$42,000 and not zero. The Government wanted zero.

Q. Not zero which the Government proposed at that time, but Prentice had proposed sixty sometime previously? A. Mr. Edell directed me to reject that proposal and it was withdrawn, and the only way was to allow such expenses as could be proven in court.

Q. So you accepted the \$14,000 -- A. I thought \$14,000 was better than I could prove in court on either the tax matter or the renegotiation matter.

Q. Right. And you had a discussion with Mr. Edell as to that, did you not? A. Oh, yes.

Q. And did you tell him that those expenses would be binding upon him in the Internal Revenue matter? A. No, I didn't tell him they would be binding on him, I told him they would be useful in that in settling the Internal Revenue matter, we would be able to show that the Tax Court had made this finding and that it would help us determine and persuade the Internal Revenue authorities to accept a greater amount of expenses than they were disposed to accept and greater than I thought we could prove in court.

Q. But as a matter of fact, when the matter went over to Internal Revenue, the \$14,000 a year was binding on Mr. Edell? A. It wasn't
185 binding, no, we tried very hard to get them to accept more and they didn't want to accept that much. We finally settled at the same figure, it wasn't binding. They wanted to allow less and we wanted them to allow more.

Q. It wasn't binding except did any -- in your conclusion that it wasn't binding, is that based upon what one of the Revenue agents said? A. It was based on the position they took and --

Q. Wasn't the position that they took, that the stipulation filed in a court of record was res judicata on that issue? A. No, no.

MR. MILLER: I object, that wouldn't be the law, Your Honor.

THE WITNESS: No.

THE COURT: What stipulation are you asking about?

MR. BERLOW: I am asking about the \$14,000 stipulation, that was precisely the expenses that were agreed upon, to the penny, in the Internal Revenue matter. And my point is that the acceptance of the Prentice proposal, after the petition was filed in Tax Court, which is a court of record, that if that \$60,000 of expenses had been accepted,

that that would have been binding on the Internal Revenue Service and in fact, as the case ultimately turned out, what was stipulated in the Tax Court was in fact binding because that is what ultimately was agreed upon. That is my position, Your Honor.

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THE COURT: Go on with your next question.

BY MR. BERLOW:

Q. Isn't it a fact, just to summarize very briefly, isn't it a fact, Mr. Casey, that the entire savings effected by you resulted from the stipulation that his expenses for the years in question were \$14,000 a year? A. Not entirely.

Q. Now, let me read to you from page 65 of the deposition and I ask you that same question:

"Isn't it a fact that the entire savings effected by you resulted from the stipulation his expenses for the year in question were \$14,000?"

And didn't you answer:

"That is right, it resulted entirely from the fact we were able to get more expenses allowed by the Internal Revenue people than they were able to allow in the original deficiency. The other issue is whether they would recognize it before the partnership between Mr. Edell and his brother."

And then I said:

"The original expenses, the Internal Revenue made no allowances for the expenses?"

"That is right."

You recall those questions and those answers? A. Yes, I think I could answer them more fully now.

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Q. The answer that you gave at that time was not a full and complete answer, is that right? A. I don't think it was as precise and as refined as a wholly accurate answer ought to be.

Q. Now, what has occurred between June 23 of 1960 and today that would put you in a position where you could now more precisely answer the question than you did at that time? A. Nothing has occurred except I have had more time to look at the records and refresh my recollection on what happened in the case.

Q. Well, at the time your deposition was taken, you were a lot closer to this matter than you are now? A. Well, I hadn't looked at anything in the matter for several years.

Q. You went to the deposition without any preparation at all? A. That is about right.

Q. And you have thoroughly prepared for the trial today? A. I read through my correspondence file and looked through everything.

Q. So that as a result of the study of the correspondence file, you are in a better position to answer these questions now? A. Well, I sometimes have second thoughts, too.

Q. And when you sometimes have second thoughts, is your recollection better many months after, sometimes, than it was many months closer? A. I am not talking about my recollection, I am talking about the precise statement, the delineation of my recollection.

* * * * *

Q. Mr. Casey, in your agreement, you refer as far as the tax matter is concerned to the proposed deficiencies. Now, isn't it a fact that the proposed deficiencies were approximately \$175,000? A. At that time, yes.

Q. Now, then, did there come a time when Mr. Edell made a payment or, let's use this language, repaid an amount to the United States Government as a result of renegotiation? A. Yes.

Q. And do you recall what that amount was? A. Well, he was required to repay \$150,000 as a result of the judgment in the
189 Tax Court decisions, and by computation, he was allowed to pay \$40,000 of that in the form of a tax credit, it was probably more, it was probably \$50,000 in the form of a tax credit and \$110,000 in cash.

Q. He paid, the smallest amount that we could talk about would be \$110,000 in cash? A. That was the cash, we had to include interest.

Q. Now, your agreement says -- does it say this or does it not say this:

"It is understood and agreed that in the determination of your fee, the deficiency proposed, namely \$175,000, by the United States Government, will be reduced by any amount repaid by me to the United States Government as a result of renegotiation."

Does it say that? A. Will you read the rest of that sentence?

Q. I will get to that in a minute. A. I would like to answer the whole sentence.

Q. I would like you to answer my question, if you don't mind. Does the agreement say what I have just read to you? A. That is the first half of the sentence, yes.

Q. It does say that? A. Yes, that is the first half of the sentence, correct.

Q. And the amount repaid by Mr. Edell was not less than \$110,000?

* * * * *

190 Q. So, you subtract \$110,000 from the \$175,000 and you get \$65,000.

THE COURT: Are you asking him?

MR. BERLOW: Yes.

BY MR. BERLOW:

Q. Isn't that correct, Mr. Casey? A. I agree with the arithmetic.

191 Q. And that \$65,000 is less than the amount ultimately determined, or \$97,000, is that not right? A. That is an accurate statement of the arithmetic.

Q. And consequently, if you followed that, then there would be no savings effected whatsoever? A. That is a hypothetical question?

Q. And you would not be entitled to the \$8,013.80 that you claim in this case? A. Is that a question to me?

Q. Yes. The question is, if you subtract from the proposed deficiencies, as the contract says you should, the amount repaid on renegotiation, as the contract says you should, you get a figure of \$65,000, which is less than the amount ultimately determined? A. Isn't that a statement rather than a question, "as the contract says you should"? The contract doesn't say you should.

THE COURT: Well, you tell us what your view of the contract is, then.

THE WITNESS: The contract clearly says that the -- it says that the tax deficiencies will be reduced by the amount paid back in renegotiation and the reduction should be accomplished by eliminating that amount from income, so that I will be entitled to 30% of the amount by which the tax is reduced by eliminating the excessive profits from income.

MR. BERLOW: Is Your Honor finished?

192 THE COURT: You are claiming, Mr. Berlow, that the defendant paid \$110,000 in cash and \$50,000 in some other way?

MR. BERLOW: I will say that the language means what he paid in cash. I think that is the simplest approach, he paid \$110,000 in cash and under the language of the contract, that must be deducted from the proposed

deficiency before -- and then you take the resulting figure and if that figure is greater than the amount determined as set forth in the chart, then Mr. Casey is entitled to 30% of that. But as it turns out, after making that deduction, it is less, so that under that theory there is no payment due. That is probably, Your Honor, a matter of construing the contract and I think, Your Honor, we can argue that at some later time. But the matter I do want to make clear from this witness is that the language of this --

BY MR. BERLOW:

Q. You just expounded a theory as to what the contract means. Is the contract clear in expressing your theory? Would you answer yes or no? A. Yes, I think it is clear. I think that is the way you have to interpret it, and my subsequent letters to Mr. Edell defined it that way, explained it that way.

THE COURT: Now, just a minute. This figure was \$183,000?

THE WITNESS: Yes.

THE COURT: All right, what, to your mind, should be deducted under this clause:

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It is understood and agreed that in the determination of your fee that the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation, and that you will not receive 30% of the tax reduction resulting from any such renegotiation refund.

What comes off, under that clause, from the \$183,000?

THE WITNESS: The renegotiation refund is deducted from Mr. Edell's gross income, because that is given back to the government, so that it is no longer income to him. And it is taken off the income so that I don't get 30% of the tax reduction that results from the elimination of that money from his income.

THE COURT: Well, that doesn't answer my question.

MR. MILLER: Your Honor, on that particular point, isn't the question, not the \$183,000 which was rejected, but the eventual outcome

of \$150,000 from the Tax Court?

THE COURT: Well, the question that I asked him was: What sums, if any, does he claim are to be reduced? This clause says something about a reduction. Now, what, under your theory and under the circumstances of this case, is the reduction?

THE WITNESS: \$51,000, which is the tax saving from the elimination of \$150,000 from Mr. Edell's income. \$51,000.

THE COURT: Are you saying, then, that \$51,000 is the amount you would deduct from the \$183,000?

194 THE WITNESS: No, not from \$183,000, from the tax deficiency which was \$175,000.

THE COURT: Very well.

BY MR. BERLOW:

Q. Well, it is your testimony now, I understand, that this contract is clear on that?

THE COURT: Well, that is a matter of opinion, Mr. Berlow.

MR. BERLOW: Well, his opinion has changed since the deposition.

BY MR. BERLOW:

Q. You remember that I read you that language? A. Yes, I said it wasn't as clear as it might be.

Q. So this language I read you is not clear on that point at all, is it? And you said: It is not clear, it doesn't seem to be clear.

Do you remember? A. Yes, yes.

Q. Now, who drafted this contract? A. I did.

Q. And to your knowledge, did Mr. Edell have any attorney representing him at that time in connection with the drafting of this contract? A. Not to my knowledge.

Q. And after the contract was executed, for the first time, from time to time, did Mr. Edell call upon you for explanations of its terms?

195 A. No, no.

Q. Did you send him a two-page letter explaining something about this contract? A. I sent him a two-page letter explaining how the original typing mistake had been made and how the \$183,000 was the

proper figure, instead of \$138,000, and in that letter I spelled out how the contract would operate.

Q. And you thought that would be helpful to Mr. Edell? A. Yes.

Q. And after he received that letter, did he hire any other attorney to represent him in connection with this contract matter? A. No, not to my knowledge.

* * * * *

BY MR. BERLOW:

196 Q. Now, Mr. Casey, there came a time, did there not, when these agreements were supplemented or additional agreements were entered into? A. Yes.

Q. And do you recall what those supplements had reference to? A. Well, one supplement, it was a matter of \$7,500 attorney's fee that Mr. Edell had paid in 1946 and he spoke to me about that, and I said, well, I wouldn't want 30% of that for eliminating it, and he asked me to put that in writing, which I did. Then after the Tax Court decision on the renegotiation matter, for a time we tried to get as large a tax credit as we could and for a time we thought that we would be able to avoid the payment of interest or we had a legal theory on which we might work out part of the interest at 4% and part of it at 6%, and it was a substantial amount of money involved and a substantial amount of time we put in, trying to work out the theory, and I told Mr. Edell about it and I said, I think that if we can save this interest, we probably ought to get 30% of the interest saving, too, and he agreed and we had a little supplementary letter in which he agreed that if we saved any interest, we would get 30% of that.

Q. With reference to the first matter, both of these supplements were reduced to writing? A. Yes.

Q. And we have one of them -- both of them, do you recall, were produced at the deposition that was taken by you? A. Yes.

197 Q. And the first one that had to do with the interest, that was signed by Mr. Edell, was it not? A. I believe so.

Q. And so was the second? A. I believe so.

Q. The one that you mentioned, the \$7,500, didn't that have to do with a refund, a tax refund, and not an attorney's fee, do you recall that? A. I really forget what was involved there. I think it was the money coming back from 1946 or 1945, I don't know exactly what was involved there. We waived any claim to it, anyway.

Q. And in that supplement, wasn't there some language in which Mr. Edell stated that you were not to make any settlement of the matter without his authority? A. Yes, we agreed I wouldn't settle the matter without his authority and made it explicit in that agreement.

Q. And did that vary any of the understandings that you had with Mr. Edell? A. No, it just expressed them in writing, I think he wanted to have it done for some reason at that time.

Q. It was your understanding at all times, was it not, that you were not to enter into any settlements of any of these matters without his approval? A. I understood I would not make any final settlement without his approval.

198 Q. And when the time came, in reference to this stipulation of \$14,000, that stipulation was actually reduced to a typewritten stipulation which was filed in court, was it not? A. Yes, it was.

Q. It wasn't just an oral agreement in chambers? A. It was a typewritten stipulation, yes.

Q. And do you have any recollection as to who typed it, whether you typed it or the other counsel typed it? A. Well, no, I think it was typed probably in my office, it might have been typed down in Foley Square in the Courthouse, where Mr. Leathers was working, from time to time.

Q. How long after it was typed was it ultimately executed by counsel? A. Oh, I don't know, a couple days.

Q. And during that period of time, between the time it was typed and the time it was executed, did you see Mr. Edell at all? A. Yes, I did.

Q. And did you have conversations with him? A. Yes, I did.

Q. And did you exhibit to him this typewritten stipulation? A. I know I exhibited it to him, I know I told him about it and discussed it with him.

199 Q. And did he read it? A. Yes, he did.

Q. And did he sign it? A. I don't think he signed it, it was a stipulation between attorneys.

Q. Your recollection is he did not sign it? A. My recollection is he didn't sign it, it was a stipulation between attorneys.

Q. Did you request that he sign it? A. I don't believe I did.

MR. BERLOW: Do you have a copy of that stipulation, Mr. Miller?

MR. MILLER: No.

* * * * *

BY MR. BERLOW:

Q. Now, you discussed that with Mr. Edell in the office; did you discuss it again in a hotel room, do you recall that discussion? A. Oh, yes, I discussed it with him in the Biltmore Hotel.

Q. Did you advise him at that time that the \$14,000 that was agreed upon as the expenses, would be considered by the Internal Revenue Bureau as binding on him insofar as income tax was concerned? A. No, I didn't advise him it would be considered binding. I did advise him that I thought it would help us in getting the Internal Revenue Service to accept

200 expenses of \$14,000, which was more than I felt they wanted to accept and more than I felt I could prove.

Q. Did you at any time make reference, at any time after the stipulation was typewritten, did you make reference to the fact, to the original Prentice proposal where the expenses were stated as being \$60,000? A. That was no longer in existence. Mr. Edell had directed me to reject that.

Q. That document had not been destroyed, had it? A. But the offer had been withdrawn and we had rejected it, so it was not -- it had no reality and no meaning.

Q. But your agreement with Mr. Edell, which was based on that proposal, that agreement was not destroyed, was it? A. My agreement

with Mr. Edell was based on the final figure in that agreement, \$183,000.

Q. It was only based on a portion of that proposal? A. No, it was based on the final amount, \$183,000.

Q. And nothing else in the proposal had anything to do with your agreement at all. A. My agreement was based on my ability to improve the excess profits demanded of Mr. Edell by reducing it below the \$183,000 figure.

Q. Now, at one point the figures were transposed, as you say, and it was \$138,000? A. Yes.

201 Q. By coincidence, not only were they transposed but that figure of \$138,000 is the tax dollars that Mr. Edell would have had to pay under the Prentice proposal? A. That is not true.

Q. Well, the figure of the tax dollars was \$137,532, something in that nature, wasn't it? A. And sixty cents.

Q. And sixty cents, excuse me. So it is within the closest thousand to that figure of \$137,000? A. But it is not the figure referred to in the agreement which is the offer of the Justice Department.

Q. It is not the figure to the penny? A. It is not the figure which was the offer of the Justice Department which, as you said, Mr. Prentice had made, in the amount of \$183,000.

Q. If the \$137,500 is the figure that you arrive at as being the cash that Mr. Edell must pay, after you take Mr. Prentice's \$183,000 proposal and deduct from it the expenses, the tax paid, and several other items which we have gone over now in that Prentice agreement -- isn't that right? A. What was that, now? I didn't get the beginning of your question.

Q. We are talking about three figures, \$183,000, that is the figure that Mr. Prentice proposed and you referred to it as their offer,
202 do you not? A. Yes.

Q. Now, in determining how much money Mr. Edell had to pay, if you accepted that offer, you had to make certain calculations, did you not? A. Yes.

Q. And one of the vital calculations you had to make was the expenses to be deducted, isn't that one of them? A. No, no.

THE COURT: I understood you to say, didn't I, that the expenses had already been deducted, in whatever the government proposed to allow, the expenses had been deducted before they fixed this figure of \$183,000?

THE WITNESS: Certainly, that is correct, yes.

BY MR. BERLOW:

Q. So, the \$183,000 was arrived at after deducting expenses?

A. Yes, that is right.

Q. But that figure is not what Mr. Edell was to pay at that time, was it? A. Yes, that was the figure Mr. Edell would have to pay, if we accepted the settlement. But he would pay partially in a tax credit and partially in cash.

Q. And after you took the cash credit, what was the cash he had to pay? A. Well, that is hard to say, that would have to be estimated

203 by the Accounting Office and the Treasury Department and the Justice Department, in fact, Mr. Amann, as of about two or three months earlier, had made a calculation which he said was tentative and it showed a figure of \$137,000 and some odd dollars, because Mr. Amann's calculation is a net cost after a tax credit.

MR. BERLOW: I think this may already be in evidence.

THE COURT: What is it?

MR. BERLOW: I have a photostat of something but I think -- it is Plaintiff's Exhibit No. 3.

BY MR. BERLOW:

Q. The calculation that Mr. Amann made is attached to a letter which is marked as Plaintiff's Exhibit No. 3? A. Yes, that is right.

Q. On the very last page, there is a notation there, total renegotiation costs, \$137,526.60. Now, would you explain to us what that means? A. That is Mr. Amann's estimate of the cash costs of accepting Mr. Prentice's offer of \$183,000 after reflecting tax credits and after estimating interest, interest payable, it says here, to March 21,

1952, and -- March 21, 1954.

204 Q. Does that include any reference to the payment of the income taxes due? A. No, this has no relation to the payment of the income taxes due.

Q. But that figure was the cash that Mr. Edell, under this settlement offer and Mr. Amann's calculations, would have to pay, less the tax credit, of course, to dispose of the renegotiation matter right there and then? A. That is the cash he would have to pay after getting credit for the taxes he had previously paid on the \$183,000 of income, which he would be charged with refunding as excessive profits under the Prentice offer.

Q. If Mr. Edell had agreed to pay that \$137,500, that would have disposed of the renegotiation matter, would it not? A. Well, it wouldn't work that way, he would have to agree to repay \$183,000, because that was the offer, and he would have gotten a tax credit of \$71,000, according to Mr. Amann's estimate, and then he would have had to pay interest on the difference. Actually, after the tax credit, Mr. Amann's estimates, the amount he would have to pay to settle the renegotiation liability would be \$111,895.97.

Q. Let me put it very simply, not being a tax lawyer, I put it in very crude terms, if he had come up, if he had presented a check for \$137,500 to the Internal Revenue Service, they would have dismissed this whole renegotiation matter and released all his money from escrow, wouldn't they? A. No, no, it would all depend on when he did it and what the interest was at that time, and so on.

205 Q. No, if he did it at that time, at the time when Mr. Amann made his calculations? A. At that time, Mr. Amann's calculations showed that if he settled -- accepted the settlement of \$183,000 and then he went and got interest computed and tax credit calculated, that he would be required to pay \$137,526.60.

Q. And that was what Mr. Edell showed you when he first talked to you? A. No, I didn't see this at that time.

Q. But you did know of this settlement proposal and the calculation? A. I never saw the tax calculation, I just knew of the settlement proposal of \$186,000.

Q. Did you make the calculation, yourself? A. No, no, this came up with Mr. Amann's papers.

Q. And you read them? A. Oh, yes.

Q. And didn't you meet with Mr. Amann and discuss this matter? A. I didn't discuss the tax credit, just discussed the case and the Justice Department's offer.

Q. Isn't it a fact, when Mr. Edell came to see you, that what he said to you was, "I have to pay \$138,000 to settle this matter. Can you improve on that figure?" A. No, I think he said the Justice Department had offered a settlement of \$183,000, and then he had his tax problems, and can you advise me how to handle the whole thing.

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Q. Isn't it a fact that all Mr. Edell was interested in, was how many dollars he would have to pay? A. I can't answer that.

Q. Did he say that to you? A. No, I don't recall that he said it in just that way.

Q. He talked to you about the offer and the credits and the deductions, and all of that, he put his proposal to you in that language? A. He talked to me about not having to pay anything at all. He wanted to have it established that he was not subject to renegotiation. He never got into these figures.

Q. Now, Mr. Casey, you made reference to a portion of the transcript in the case before Judge Heron, in which there was reference to a bankruptcy that Mr. Edell was involved in. Do you recall the year in which that occurred? A. I think it was 1938.

Q. And that is an isolated portion of the testimony, isn't it? A. Well, it was pretty vital, it wasn't isolated -- every portion is isolated.

Q. Are you certain the year was 1938? A. I am quite certain.

Q. Could it have been 1932? A. I don't think so. Wait a minute,

207

when I said 1938 --

Q. There were a lot of bankruptcy --

MR. MILLER: Just a minute. He hasn't finished his answer.

THE WITNESS: When I said 1938, I am talking about the tax return. Now, I don't know, the bankruptcy might have been earlier, I was under the impression it was the same year, it might have been earlier.

BY MR. BERLOW:

Q. There were an awful lot of bankruptcies in 1932, as you know, in addition to Mr. Edell? A. I guess that is not a question, is it?

Q. Were there, do you know that there were? A. I have heard there were.

Q. I think you said in your testimony, that this evidence was very damaging, so far as Mr. Edell's case was concerned, was it not? A. I said that the discrepancy between the income he said he had earned and his tax return impaired his credibility and made it difficult to establish those things, and I had to rely on his testimony entirely.

Q. I will get to the tax return in a minute. I am talking about the piece of testimony, the one piece of testimony in this 400 page transcript that you referred to and that piece of testimony I am talking about is the bankruptcy. A. That is not the one piece of testimony I am referring to --

208

Q. That is all I am referring to. A. O.K., you said the one piece I referred to.

THE COURT: You gentlemen shouldn't attempt to both talk at the same time.

MR. MILLER: The Court please, may I object on the ground the testimony is not being quoted accurately from the tax record. Page 411 shows petition in bankruptcy dated January 31, 1938, discharged June 17, 1940, and I submit the questions about 1932 are not proper.

MR. BERLOW: I stand corrected, Your Honor. The petition was filed --

THE COURT: Well, I don't think it is important.

MR. BERLOW: I don't think it is very important.

BY MR. BERLOW:

Q. All I am trying to say is, if somebody read this transcript, they would find that in the course of the trial, as a result of your efforts, you introduced a great deal of evidence in connection with Mr. Edell's ability and integrity, that made a favorable impression on Judge Heron, did you not? A. I introduced that in direct examination and Mr. Leathers introduced the testimony you just brought up, in cross-examination. I don't know what kind of an impression it made on Judge Heron.

209 Q. But the fact was that Judge Heron did find that a reasonable profit, which Mr. Edell was entitled to, was substantially in excess of that which even Mr. Prentice proposed, did she not? A. Yes, and she did not believe his testimony that he did not solicit contracts, which was the basic thing on which Mr. Edell was relying.

Q. Now, when you represented Mr. Edell in this case, you took the position, did you not, that he did not solicit, didn't you? A. I argued that, yes.

Q. And your argument in that regard was based upon a careful and thorough examination of the evidence that you had examined on that issue? A. Well, it was based on --

Q. Would you answer that yes or no? A. Yes, that is right.

Q. And when you made this argument to the court, you argued to the court, did you not, that the court should find on this evidence that he did not solicit? A. Certainly.

* * * * *

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BY MR. BERLOW:

Q. Mr. Casey, your counsel has offered this letter from the United States Treasury Department, Bureau of Internal Revenue, which is marked Plaintiff's Exhibit 10. This letter comes from the Office of the Director of Practice. Was this the first communication that you received from them in reference to these agreements? A. As far as I know.

211 Q. So that it wasn't until October 13th that you were aware that these agreements in some way contravened their practice? A. Oh, no, that is not true. I was aware, before I filed the agreements, that I would have to show a reasonable relationship between the retainer and the amount involved and the matter that was pending before the Internal Revenue Service, because I know that and my associate in the office pointed that out, I felt that in order to make that square with my understanding with Mr. Edell, we had to set up two agreements.

Q. So you did prepare these agreements, then, in accordance with the practice? A. Oh, yes, back in July, I prepared them in accordance with my version of what had to be done in accordance with the practice.

Q. So Mr. Lee, who was the Director of Practice, was mistaken in his letter of October 13, then, when he advised you that these agreements were not in accordance -- A. No, he raised a further point, I hadn't specified the amount involved in the litigation.

Q. And then it was necessary to change the agreement again? A. No, the agreement wasn't changed, I just had to answer the questions he raised, that's all, it was not necessary to change the agreement. He asked for more information, in that letter.

212 Q. And you provided him with that? A. I assume I did.

Q. And so that this letter, which has been offered by counsel, has no bearing insofar as changing these agreements is concerned?

A. No bearing at all, the agreements were not changed.

Q. Now, Mr. Casey, do I understand it to be your testimony that insofar as -- getting to the income tax matter, the fact is you never did any work on the 1946 or 1947 income tax returns? A. I never did any active work, I discussed it with the accountants continuously, with Oppenheim and Mr. Dixon of the Oppenheim office, kept them posted on what we were doing.

Q. Now, one of your reasons for that was that you never received the income tax returns for those years? A. I received the income tax

return for 1946, but not for 1947, and I didn't receive the books of account or any of the data backing up the income tax return for 1946.

* * * * *

214 BY MR. BERLOW:

Q. Did you receive any data at all in reference to the 1947 taxes? A. I don't believe so.

Q. Did there come a time when -- A. Mr. Dixon had it.

215 Q. Mister who? A. Mr. Dixon had it. It was available to me but I never received it in my possession.

Q. Did there come a time when a letter dated July 27, 1957 was addressed to you by Mr. Amann's firm, and that three-page letter made reference to the documents that were delivered to you by him? A. Yes.

Q. And do you recall the Amann firm requesting that you sign the third page of that letter? A. Yes.

Q. Acknowledging receipt of the documents referred to therein? A. Yes.

Q. Now let me read the second page of that letter and ask you if that refreshes your recollection that you did receive those documents. The letter says:

"We are further enclosing papers of Mr. Edell and photostats of his tax returns which we had segregated into various subfolders for ease in working with them, as, follows: Harry Edell activity memo, Harry Edell 1943 federal taxes, 1944 federal taxes, 1945 federal taxes, 1946 federal taxes, 1947 taxes, Myrna Edell taxes, Davis Edell taxes."

216 Does that refresh your recollection that you did receive various folders enclosing the papers referred to? A. Yes, but there was nothing in the 1947 folder of any consequences. The '47 tax return wasn't there; the '46 tax return was there. It was merely an activity file Mr. Amann set up in 1947, but nothing in there of any consequence.

Q. And did you point that out to Mr. Amann when you executed this receipt? A. Oh, yes, and Mr. Amann has a letter in which he said he had no '47 data.

Q. That would be another letter? A. Yes.

Q. That letter would contradict what is said in this letter of July 27th? A. Oh, no.

Q. Do you have that letter? A. I think we have it. This is the file.

Q. But you do recall signing -- the July 27th letter in the space indicated; do you not? A. There is no signature on here. There was a 27th letter, I guess this is it.

Q. Would you look at that July 27th letter, and after you have read it, advise me as to whether or not you did or did not receive the data referred to in the three pages of that letter. A. I received the

217 data referred to, yes.

Q. All of it? A. Yes, all of it.

Q. Now you made reference to some accountants who had represented Mr. Edell, and I believe you mentioned the name Louis Appel? A. Yes.

Q. And do you recall for how long a period of time Mr. Louis Appel was Mr. Edell's accountant? A. I only recall what Mr. Edell told me.

Q. What was that? A. It was that Mr. Louis Appel had apparently been his accountant for sometime, and that he had been his accountant during the four years and he kept his books for '43, '44 and I believe '45, and he died somewhere in there and lost the books, lost the books of account.

Q. And Mr. Edell told you that Mr. Appel lost the accounts before his death, lost the books of account before his death, is that it? A. No, he didn't tell me that. He told me that Mr. Appel died and that he was never able to find the books or recover the accounting data which Mr. Appel had presumably kept.

Q. But there were some other accountants who succeeded Mr. Appel, were there not? A. Yes.

218 Q. And that was the firm of Oppenheimer, Appel and others; is that right? A. Yes.

Q. And you spoke to Mr. Dixon in that firm? A. Mr. Dixon is one of the gentlemen that I spoke to, yes.

Q. And at any time did Mr. Dixon advise you that the Appel in that firm was the nephew of Louis Appel and that he had worked with Louis Appel during all the time that Mr. Edell was handled by Mr. Appel? A. I don't recall that. I do know there was some relationship between the Appels, and they were two different Appel's.

Q. Isn't it a fact that this firm was simply a continuation of the practice of Mr. Louis Appel who is deceased? A. I have never understood that to be the case.

Q. Did you ever talk to the new Appel in that firm? A. No.

Q. Was his name spelled the same as the other Appel? A. They were two different individuals.

Q. Was the name "Appel" spelled with the same number of letters, the same way? A. I suppose so, I don't know.

219 Q. Now when you spoke to Mr. Dixon of the Appel firm, did he confirm what Mr. Edell you say told you, namely, that all of his records had been lost? A. That his books of accounts, his books for those years had been lost, and Mr. Edell so testified before the tax court.

Q. And the income tax returns, however, had been prepared by this accounting firm, had they not? A. When you say "accounting firm," my belief is that the income tax returns for '43, '44 and '45 had probably been prepared by Mr. Louis Appel before he died.

Q. And filed? A. And filed, yes.

Q. And a substantial tax was in fact paid by Mr. Edell for those years, was it not? A. Not very substantial.

Q. \$78,000? A. I don't know. I have those figures somewhere here.

Q. Well, he paid such a tax as the returns indicated should be paid? A. It was \$1,215 in 1943; it was \$18,000 in 1944; and it was \$23,000 in 1945.

Q. And that is the tax which Mr. Edell actually paid in those years? A. Yes, that's what he reported, and that's what he paid.

220 Q. And those were the taxes that had been calculated from the income tax returns which were filed in those years? A. Yes.

Q. And to your knowledge, were those returns filed on time? A. I don't know.

Q. Now in your experience as a tax lawyer, it's a fact, isn't it, from your experience you know that it's important, extremely important, to have these tax returns specifically for '46 and '47 if you're going to work on the man's tax problems. It was important to have them? A. It's important to have access to them, which I had.

Q. By getting photostats? A. No, by talking to the accountants. The accountants were handling those years with the agent, and they had not passed out of the agent's hands yet.

Q. And they had the tax returns? A. Yes. The Government had a copy and the accountants had a copy. I recall we had a copy of '46. I don't think we had a copy of '47.

Q. But '47 was readily available to you? A. We went down and looked at them, certainly.

Q. And at the request, you could have gotten a copy either from Internal Revenue or from the accountants? A. Certainly.

221 Q. So the fact that you were not delivered the '46 and '47 tax returns didn't substantially hinder you in your representation of Mr. Edell, did it? A. I testified that it was agreed that the 1946 and 1947 would be taken up after renegotiation, after '43, '44 and '45 would be settled. If I was still to handle '46 and '47 at that time, I could go and get the returns, certainly.

Q. So to get back to my question, the fact that you did not have those returns did not hinder you at all in this matter? A. No, they weren't necessary at that time.

Q. Were these records that Mr. Amann delivered to you, as set forth in the letter of July 27, 1954, were they helpful to you? A. They were helpful, not as helpful as I hoped they would be.

Q. And Mr. Amann in fact had correlated all these records in some way, done a lot of that work, had he not? A. Well, he put them in separate files by companies, and he had prepared an affidavit which Mr. Edell had signed in which he made certain statements in respect of those records.

Q. So the answer is there was some correlation? A. Oh, yes; certainly.

222 Q. And the petition in the Tax Court which is what in this Court we would call a complaint, isn't it comparable to a complaint in this Court, the petition that was filed there? A. Yes.

Q. That was prepared by Mr. Amann? A. No.

Q. That was prepared by you? A. No.

Q. Mr. Pittman? A. Well, I don't know.

Q. It wasn't prepared by you? A. It was prepared by the Pittman and Roberts firm and filed by them.

Q. Was it necessary to amend that in any way? A. I don't recall that it was.

Q. Was it necessary to amend this petition in any way during the course of the trial or after its filing? A. I don't recall that it was. I think there was an amendment perhaps at the time of trial to reflect a stipulation, but I don't think there was anything prior to that time. I'm not very clear on that.

Q. And after you got these records from Mr. Amann, didn't you proceed to use those records in building up Mr. Edell's expense picture? A. Well, we proceeded to analyze those records to determine how much expense we could justify or prove Mr. Edell had incurred, yes.

223 Q. And you wrote Mr. Edell on November 16, 1954 that you were building up this expense picture; do you recall writing him that? A. Yes. If the letter is there, yes.

Q. And that was this work that you were doing was based upon these records that had been delivered to you? A. Well, it was based upon those records and other information we had gathered in talking to Mr. Edell, and Mr. Edell produced some supplementary data that

Mr. Amann hadn't had. And then we tried to verify some of his travels by talking to the contractors he worked for.

Q. Now it was Mr. Edell who provided you with additional information? A. Some additional information, yes.

Q. But Mr. Amann, when he had negotiated this settlement arrangement with Mr. Prentice, which provided for \$60,000 of expenses, all he had was the information that was delivered to you on July 27, 1954?

A. Well --

Q. So far as you know. A. I don't know what he had, as far as I know -- I do say that the basis of the settlement proposal was a study made by the Renegotiation Board.

Q. I didn't ask the basis of the settlement. A. I don't know that
224 Mr Amann submitted anything as a basis for the settlement. In fact, the settlement came from Pittman and Roberts' submission of a \$42,000 offer, and it was a response, and I don't know if Mr. Amann submitted anything to the Government at that time.

Q. The offer pre-dated Mr. Amann's representation? A. Mr. Edell's offer was made by Pittman and Roberts.

Q. I'm talking about the Prentice offer. Mr. Edell offered \$43,000, I'm not talking about that. I'm talking about the Government's offer which was the basis upon which the agreement for your employment was -- A. That's right.

Q. That is all I am interested in. Now Mr. Amann did have these records referred to in the letter of July 27, 1954? A. Yes, he did.

Q. At the time he negotiated this settlement, this proposed settlement, and obtained the offer from the Government, did he not? A. I don't know that he negotiated the offer. He had those records at the time he received the letter, or the letter was sent, reflecting the offer with the Government. I don't know whether that offer went to Pittman and Roberts or whether it went to Amann or went to both of them.

Q. And you don't know whether or not the offer of the Government insofar as the expenses was concerned, was based upon the Government's

225 examination of the records that were first delivered to Mr. Amann and then delivered by Mr. Amann to you? A. I believe that offer was based on the independent investigation which the F.B.I. had made of Mr. Edell, such records as he had.

Q. Now other than these records that were delivered to you by Mr. Amann, do you know of any other records that the F.B.I. examined? A. No.

Q. So that the F.B.I.'s conclusion, you don't know whether the F.B.I.'s conclusion was based on these records either, do you? A. No.

Q. And when we refer to the F.B.I., do you know whether the agents who actually performed these investigations were Certified Public Accountants? A. No, I don't know who they were.

Q. But you do know that there are in the F.B.I., many Certified Public Accountants? A. I have heard of that.

Q. And you do know that as a matter of practice in tax matters the F.B.I. does employ accountants who handle these tax problems? A. Sometimes.

226 Q. You never discussed this matter with anyone from the F.B.I.? A. Oh, no.

Q. Mr. Amann handled all that? A. No, Mr. Amann never discussed anything with anybody from the F.B.I. He discussed only the conclusion with Mr. Prentice and Mr. Hickey. The F.B.I. reports were considered confidential by the Government and were never disclosed to Mr. Edell's representatives.

Q. They were just referred to in conversation? A. That's right. They said we have this information based on our investigations, and they testified as to that before the Tax Court.

Q. Now there came a time when Mr. Laurens Williams appeared on the scene? A. Yes.

Q. And he is a competent tax lawyer, as I believe you testified? A. Yes.

Q. Now isn't it a fact that by December 16, 1958, it was Mr. Williams who was representing Mr. Edell in this matter, and not you?

A. Well, I don't know quite how to answer that. I would say that by agreement I was representing him in 1943, '44 and '45. Mr. Williams was advising Mr. Edell as to whether or not he should take the settle-
 227 ment I had proposed that he should take, and then Mr. Williams, by agreement with Mr. Edell, went to work with the accountants to handle '46 and '47. When '43, '44 and '45 had been sufficiently settled and it had been decided to accept that settlement, he went on to the next step, which was 1946 and 1947.

Q. So your answer to my question is you don't know Laurens Williams was Mr. Edell's tax attorney on December 16, of 1958; is that your answer to my question? A. My answer in that Mr. Williams was an attorney who was acting for Mr. Edell with respect to '46 and '47, and to whom I was reporting in lieu of Mr. Edell in respect to '43, '44 and '45.

Q. But on that date you were still Mr. Edell's attorney insofar as the tax liabilities for the years ended December 31st, 1943, '44 and '45? A. I think I was, yes.

Q. And on that date was a copy mailed to you of the audit statement showing the agreed upon tax liability for that year? A. Well --

Q. Or was the copy mailed only to Laurens Williams? A. I don't know.

Q. Let me show you this letter from the United States Treasury Department, Internal Revenue Service, dated December 16, 1958, and
 228 call your attention to the third paragraph, which says, "A copy -- " Well, let's refer first to the first paragraph:

"Your income tax liabilities for the taxable years ending '43, '44 and '45, were made the subject of hearings before this office with your representative." Singular.

And then it goes down in the next to last paragraph and says:

"A copy of this letter has been mailed to your representative, Laurens Williams, Esquire, Ring Building, 18th and M Streets, Northwest."

Does that refresh your recollection? A. Yes, this is exactly the

settlement that we had made and had recommended to Mr. Williams -- to Mr. Edell and then to Mr. Williams.

Q. And does that refresh your recollection that it was Mr. Williams who represented -- A. In that transaction it was handled that way.

Q. I'd like to finish my question, if I may.

229 Does the reading of this letter dated December 16, 1958, refresh your recollection that it was Mr. Laurens Williams who was Mr. Edell's representative in connection with the income tax liabilities for the years 1943, '44 and '45, and not yourself? A. No. The reading of that letter indicates to me that whoever wrote the letter treated Mr. Williams in that capacity.

Q. And the person who wrote that letter and sent the copy to Mr. Williams was mistaken in referring to Mr. Williams as Mr. Edell's representative for the income tax liabilities for those years? A. I was never notified that my authority had been revoked with respect to those years in any way to this date.

Q. Have you ever -- A. And Mr. Edell filed a power of attorney, signed a power of attorney, identifying me as a representative in this matter after the settlement referred to in that letter had been made and after Mr. Williams said that he couldn't do any better than that settlement.

Q. Do you know Mr. Ellis L. Jacker, Associate Chief of the Appellate Division, who signed this letter of December 15, 1958? A. I don't know that I do; never talked to him in relation to this matter anyway.

Q. Now insofar as the income tax liabilities for those years were concerned, isn't it a fact that you could not commence your work on those matters until such time as the renegotiation matter was completed?

230 A. Well, I commenced work on them because many of the matters in renegotiation and income tax were related, they were the same matters, Louis Appel's services, the expenses, so in that sense I worked on them from the beginning. In the sense that we couldn't have any fruitful negotiations looking toward settlement, it's true that that could not be done until the renegotiation matter had been disposed of.

Q. Well, the Internal Revenue people didn't want to spend any time on the tax deficiencies until the renegotiation matters were settled; is that right? A. That's right, but we spent time.

Q. Even though they didn't care to, you did? A. We had to prepare the case, we had to prepare the facts.

Q. But after the renegotiation case was terminated, then you were in a position to discuss the matter with the Internal Revenue people; is that right? A. That's correct.

Q. And when did you do that for the first time? A. I think that was towards the -- in the fall of 1957.

Q. The partnership issue in the income tax matter, as to whether or not there was a family partnership, there was no merit to that contention, was there? A. Well, Mr. Edell had filed a return on the basis that a partnership had existed between him and his brother, he had a written partnership agreement. The Internal Revenue Service
 231 recognized the existence of this agreement but said that it was a sham and that there was no real partnership because Lewis Edell had done no work and had no participation in the activities of the Harry Edell partnership, and before the Tax Court we brought out testimony from Mr. Edell that Mr. Lewis Edell had been active, and none of the companies or witnesses representing the companies from which the Edell partnership had worked, they all testified that they had never seen Lewis Edell, they had never heard of Lewis Edell, and the Government put on the stand an F.B.I. witness who had gone down to talk to Mr. Edell --

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BY MR. BERLOW:

Q. The partnership arrangement, was it or was it not the subject matter of testimony in the renegotiation case? A. Lewis --

Q. Would you say yes or no, please? A. Yes.

Q. And was it also the subject matter of discussion with the Internal Revenue people? A. Yes.

Q. And in either proceeding was it recognized? A. Judge Heron's

decision says that Lewis Edell rendered insubstantial services, if any, to the partnership.

Q. So she gave no recognition to that? A. She gave no recognition to Lewis Edell.

Q. And neither did they in the Internal Revenue? A. Internal Revenue was never willing to recognize the existence of the partnership.

Q. And that was clear at the outset, was it not? A. Well, it wasn't so clear at the outset. It was clear at the outset that they did not want to recognize a family partnership. Mr. Edell said that such a partnership existed and it could be proven, and it was impossible to prove it before the Tax Court.

233 Q. And there was never any testimony taken before Internal Revenue on it, that was just discussion among the agents, wasn't it? A. That's right.

Q. So then the only other issue so far as taxes were concerned was the issue of expenses; is that right? A. I believe that's right.

Q. And that was ultimately settled in precisely the same amounts as the stipulation before Judge Heron? A. Yes.

Q. Now insofar as the years 1946 and '47 was concerned, you did nothing on that? A. I didn't talk to the Internal Revenue Service, I talked to Mr. Dixon of the Oppenheim firm, but didn't anything beyond that.

Q. And you are making no charge for those years? A. Made no charge for those years.

Q. But in the original agreement it was contemplated, was it not, that you would handle all five years? A. The original agreement said that my compensation would be based upon tax savings for each of the five years, yes.

Q. And when this agreement was amended, was it amended in writing? A. Well, I have already testified that it was amended on two occasions in writing.

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Q. And did Mr. Edell sign any document saying that you do not have to handle the '46 and '47? A. No. He told me not to, and I

agreed orally

Q. But he never signed any written statement amending the written agreement in that way? A. Not in any written agreement. He gave Mr. Williams authority to handle those years.

Q. I just have one or two more questions.

Now there was a time in accordance with some case in the Tax Court, it appeared to you that there was some likelihood that Mr. Edell would not be subject to renegotiation at all? A. Yes. We argued very strenuously on that score.

Q. Now assuming that was the result, then assuming that your figure of \$183,000 is the base figure, your fee then would have been 30 percent of \$183,000, or close to \$60,000? A. \$54,900.

Q. And then insofar as expenses were concerned, insofar as the Internal Revenue matter was concerned, you would be entitled to an additional fee? A. Yes. The tax brackets would have been small, so it would have been a smaller fee.

235 Q. But whatever expenses were allowed in excess of the expenses that Prentice had proposed, that would certainly increase or result in a fee to you in the income tax matter, wouldn't it? A. I don't know what you're saying.

Q. Prentice's agreement proposed expenses of \$60,000. A. Proposed a settlement of \$183,000.

Q. And in that proposal there was reference to expenses of \$60,000? A. Yes

Q. Now if Internal Revenue had agreed that the expenses were in excess of \$60,000, there is no question but that you would have been entitled to an additional substantial fee? A. Oh, certainly, the more expenses I could get Internal Revenue Service to recognize, the larger my fee, certainly.

Q. So if there had been no renegotiation, you would have gotten about \$60,000 on that. A. Fifty-four.

Q. Fifty-four. And then -- \$54,000, and if you took the expenses that Mr. Prentice has proposed and incorporated that in that chart of

yours, you would have gotten a fee substantially in excess, on the income tax matter, substantially in excess of \$8,000? A. I'm not sure about that because I would have had to take \$183,000 out of income -- I wouldn't have taken \$150,000 out of income, so the income

236 would have been higher, and the tax brackets would have been different. Of course, I had no power to take it, and the Government -- the Internal Revenue would have to accept it.

Q. You would have gotten some fee though? A. I think I would have gotten a fee, but I don't know whether it would be higher than that or not because your bracket would be different.

Q. Did you estimate what it would be? A. Not without doing a lot of calculations.

Q. And the agreement that you entered into with Mr. Edell did contemplate, we can agree, a fee, if there was complete success, a fee in excess of \$54,000? A. Yes, if I hit a home run and had complete success I would have been entitled to a fee of sixty-some-odd-thousand dollars.

Q. Now if Internal Revenue allowed no expenses, under that arrangement would your \$54,000 fee be reduced in any way? A. No. there would have been no saving in income tax, that's all. I wouldn't have earned anything on the income tax part of it, of the agreement.

Q. Now when Mr. Edell executed -- there are three agreements which he executed, one for one-hundred and thirty-eight on renegotiation, and that was changed to one-hundred and eighty-three, and then the income tax, and they are dated July 28th and August 6th. Now at that

237 time was a substantial amount of the assets of Mr. Edell in escrow? A. There was a substantial amount of securities in escrow, I don't know whether that was the substantial part of Mr. Edell's assets.

Q. You don't know whether it was ninety percent of Mr. Edell's assets or whether it was all of his assets? A. I don't know.

Q. At the same time those agreements were executed, was interest running on whatever the indebtedness was to be? A. Yes.

Q. And interest had run -- interest was calculated when this

was all over, interest was calculated from 1943 in one instance, wasn't it? A. Well. I guess it was '44 when the tax return was due.

Q. I see. The interest was calculated from '44, the interest started running in '44, '45 and '46? A. Yes, sir.

Q. And on the renegotiation matter, when did the interest start to run? A. I believe it started to run when the War Contracts Adjustment Board made the determination that Mr. Edell had earned excessive profits of \$282,000.

238 Q. And all during the time that he was negotiating with you in connection with this agreement, these agreements, that interest was running? A. And for about six years prior to that time.

Q. And for six years prior to that time. And during all the period until the matter was finally settled? A. Yes.

Q. And during all of that time that he was negotiating with you as to your fee agreement, these assets of his were in escrow? A. Yes.

Q. And he was unable to use them? A. Well, he was getting the income from them, I believe.

Q. But he was unable to use the principal? A. The principal. He got the income from it, which offset the interest.

Q. But he had to keep that much of the assets -- A. Yes.

Q. Confined. A. The Government wanted more.

Q. The disbursements -- just very briefly -- the disbursements, you have \$50 for a trip to Washington. Let's see, let's refer to your expenses not Mr. Brady. You have the first of September, 1955, travel to Washington, \$50. That is just your estimate of the expenses, is it not? A. Yes, that's right.

239 Q. And the next item is the first of December, \$50, that is also an estimate? A. That's right, airplane fare, taxis.

Q. And that is true as to all of these items, is it not? A. Yes. I imagine so.

Q. You have no documentary substantiation for these items available at this time, do you? A. Not available at this time, no.

Q. Do you have your records showing the time -- is that it in front of it, showing the times? A. These are some notes that I made.

Q. What was your testimony as to the time spent in Washington in 1955 on this matter? A. One trip to Washington in 1955.

Q. And how many trips to Washington in 1956? A. One.

Q. One in -- A. Wait a minute. I'm sorry. 1956 was the time of the trial. I had one trip later in '56, and at the time of the trial I believe I made two trips.

Q. The trial was two consecutive days. A. Yes, but I had to come back -- Judge Heron had us come down to take this stipulation which we made in round numbers, and agree to break it down by years, so we had a subsequent conference, and I may have come down once during the preparation and exchange of briefs.

240

MR. BERLOW: I have no further questions.

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Casey, you were asked some questions about fraud claims by the Government. Were those oral or in writing? A. Well, they were oral as far as the Government is concerned.

Q. Was that customary? A. Yes. Until the final determination of the deficiency they don't apply the civil fraud penalty.

(Thereupon, Plaintiff's Exhibit 23 and 23-A were marked for identification, and thereafter exhibited to counsel.)

BY MR. MILLER:

Q. I will hand you a letter dated February 18, 1958 to Mr. Laurens Williams from Mr. Edward Brady and ask if that communication came to your attention. A. Yes.

Q. Briefly, what does that communication indicate? A. It says that --

MR. BERLOW: I object to what it indicates. It is very short and to the point, Your Honor.

241

MR. MILLER: It was easier than having it read was the only reason for the question.

THE WITNESS: It says Agent David Korr contacted us today and he will not wait any longer. He claims he has to set up a 90-day letter and put a fraud charge against Harry.

MR. MILLER: That's enough. I will offer this Exhibit 23 in evidence.

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit 23-A, which is dated November 1, 1957, being a memorandum to Mr. W. J. Casey from Mr. E. J. Brady. Ask you to identify it and tell briefly what it says about the fraud charge. A. It says Korr, the special agent, said he will allow us \$12,000 a year in expenses, he will give us \$2,500 for Lewis' work. He says Feldman, a special agent in charge, who is a fraud investigator, tried to hang Harry on a fraud case. The fraud case came about when Harry gave \$17,000 to a Mrs. Nass to purchase securities in her name for him in 1942.

Harry, for the years 1938, '39, '40 and '41, reported total income averaging \$2,000. The agent made a recommendation for fraud but somehow or other it never came about.

242 Also, in regard to the partnership, Harry, in 1946 closed out his return and admitted no partnership and let all the receipts received in 1946 be taxable to him.

The Agent Feldman could never find the \$5,000 which Lewis was to have contributed.

The companies paid Harry and some of them withheld. Harry claimed the withholdings on his own return. The agent also went to the individual companies and asked if they ever heard of Lewis Edell. The agent has statements to the effect that none of the companies had ever heard of Lewis Edell.

In his affidavit which he had filed with the I.R.C., he claimed that the expenses belonged to him, instead of to the partnership.

They are pretty strong on holding this partnership point and I don't know whether we have a good case or not

* * * * *

244

BY MR. MILLER:

Q. Mr. Casey, will you tell the Court what happened to the estimated \$60,000 in expenses mentioned in the Government's offer of \$183,000 settlement, when the \$183,000 offer was rejected by Mr. Edell? A. Well the \$60,000 expense allowance was then not available and the Government said if we went to court we would have to prove all the expenses.

Q. When you went to court, and before you made the stipulation in Tax Court, what figure on expenses was then available to you as far as the Government was concerned? A. Nothing.

Q. And you then moved from a position of zero to a position of \$42,000 on the basis of the stipulation that you testified you entered in Tax Court? A. Yes, I did; that's right.

245

(Thereupon, Plaintiff's Exhibits 24, 25 and 26 were marked for identification.)

BY MR. MILLER:

Q. You were asked about discussions or contact with Mr. Williams in 1958. I will hand you Plaintiff's Exhibit 25 which is a letter from Mr. Brady to Mr. Korr under date of September 17, 1958 and ask you if you will identify that, please. A. Yes, I have seen this letter.

Q. And does that reflect contact between your office and Mr. Laurens Williams in September, 1958? A. Yes, it says As soon as we get word from Williams that the tax liability for the year '46 is determined, we will contact Internal Revenue to close out the years of the taxpayer that we are concerned with, which is '43 to '45.

MR. MILLER: I will offer Plaintiff's Exhibit 25 in evidence.

MR. BERLOW: Who is that letter from and to?

MR. MILLER: From Mr. Brady to Mr. Korr of Internal Revenue. And it refers to conversations they had had among themselves and with

Laurens Williams.

MR. BERLOW: I object to it, Your Honor.

THE COURT: Who is this supposed to be from?

246

MR. MILLER: From Mr. Brady to Mr. Korr of Internal Revenue.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 25, previous marked for identification, was received in evidence.)

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit No. 24, which purports to be a Power of Attorney executed by Mr. Edell on May 20, 1958, revoking previous Powers of Attorney and designating as his counsel Laurens Williams, Kenneth Liles of Washington, and William Casey and Edward Brady of New York, and ask if that is the Power of Attorney that you referred to in your testimony, on cross examination. A. Yes. Mr. Edell made out a new Power of Attorney in which he authorized Williams and Liles and myself and Brady to handle '42 through '46.

Q. Keep your voice up, please.

Then in the fall of 1958, when you were asked by Mr. Berlow, is it your understanding that you and Laurens Williams were both representing Mr. Edell in tax matters? A. Yes. We had the Power of Attorney from the beginning, including that one, and never received any notice of any modifications.

MR. MILLER: I will offer Plaintiff's Exhibit No. 24, Your Honor.

247

MR. BERLOW: No objection.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 24, previously marked for identification, was received in evidence.)

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit 26, being a letter dated August 29, 1957, to yourself, Mr. Casey, from the Department of Justice, signed by Mr. MacGuineas, Litigation Section, setting forth

the renegotiation indebtedness following the determination by the Tax Court. I ask if you received that and if those are the figures that were used in the recomputation. A. Yes, I did receive it, and these are the figures.

MR. MILLER: I will offer into evidence Plaintiff's Exhibit No. 26.

THE COURT: Have you seen this, Mr. Berlow?

MR. BERLOW: Yes. I have no objection to it, Your Honor.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 26, previously marked for identification, was received in evidence. Thereupon, Plaintiff's Exhibit No. 27, was marked for identification.)

248

BY MR. MILLER:

Q. I will hand you Plaintiff's Exhibit 27, which Mr. Berlow asked you some questions about, referring to it as Defendant's Exhibit No. 3 for identification in your deposition, being a memorandum in re Harry Edell, bearing date 4/21/54, and ask if that is a memorandum reflecting the settlement proposed by J. H. Prentice, December 16, 1953, regarding the excessive profits claim. A. Yes. This is the memorandum on the settlement which adds up to \$183,000.

Q. Will you examine the three figures read to you pertaining to expenses and tell the Court whether occurring opposite the figures appearing there, appears where it is estimated? A. Yes. It shows the figures as expenses, paren (estimated), end paren.

Q. Were those the \$60,000 in expenses, approximately, which were withdrawn by the Government following rejection of the \$183,000 offer? A. Yes. These were estimated expenses. When it was rejected, the expenses were withdrawn.

MR. MILLER: I offer Plaintiff's Exhibit No. 27.

MR. BERLOW: No objection, Your Honor.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 27, previously marked for identification, was received in evidence.)

249

BY MR. MILLER:

Q. Mr. Casey, what is the legal rate of interest in the State of New York? A. Six percent.

Q. For obligations which do not bear a specific rate; is that correct? A. Yes, sir.

MR. MILLER: May we stipulate that six percent is also the rate of interest in the District of Columbia, or I will cite the Code.

MR. BERLOW: I will so stipulate.

BY MR. MILLER:

Q. Did you show Mr. Edell the written stipulation that you testified concerning the \$42,000 expenses to be stipulated in the Tax Court hearing on renegotiation? A. Yes. I showed him the draft and I showed him the final stipulation.

Q. Did he agree to it? A. He told me to do what I had to do, what I wanted to do. He said, You're my authority. He agreed it was a wise thing to do.

Q. At the time that you were acting as counsel in the renegotiation hearing on the excessive profits in the Tax Court, was it the desire and intent of Mr. Edell to try to keep from having to pay any excessive profits or restore any excessive profits? A. Well, that's the result he was
250 hoping for, yes.

Q. You were asked some questions about the \$137,000-some-odd-figure which resulted from the computations on \$183,000. A. Yes.

Q. Do I understand you correctly that the \$183,000 settlement offer was the gross amount that Mr. Edell would owe the Government? A. Yes. On the basis of the settlement, if he wanted to accept it.

Q. Would it be necessary then to make certain deductions from the gross amount to arrive at a net amount cash he would owe the Government? A. Yes. We deduct the tax credit the amount by which the payment of tax would be deducted.

* * * * *

252

BY MR. MILLER:

Q. Mr. Casey, the Exhibit which you already testified to, I think, had the gross figure of \$183,000, the Tax Court finding of \$150,000, your
253 saving was then \$33,000 upon which you computed your fee? A. Yes.

* * * * *

256

BY MR. MILLER:

Q. Mr. Casey, would you tell the Court what was the final gross settlement offered to the defendant by the Department of Justice on renegotiation? A. \$183,000.

Q. Now had that offer been accepted, what credit for taxes would Mr. Edell have been entitled to? A. Mr. Amann estimated it would be \$71,104.03.

Q. That would therefore leave a net amount due to the Government with that adjustment of what?

THE COURT: Just a minute. I didn't get that amount. Credit for taxes would be \$71,000 and what?

THE WITNESS: \$104.03.

* * * * *

257

BY MR. MILLER:

Q. That would then leave a net amount due the Government of what? A. \$111,895.97.

Q. Then to that net amount due, would Mr. Edell have been required to pay taxes, to keep them comparable, through March 21 of 1954? A. He would have been required to pay interest.

Q. Interest? A. Of \$25,630.63 up until March 31st, 1954.

Q. Then up to that date what would have been the net cost in cash to the defendant to repay the United States Government had he accepted the \$183,000 offer, and had it been adjusted as you testify? A. Mr. Amann estimated it would be \$137,526.60.

Q. Now, I will direct your attention to the judgment awarded by the United States Tax Court after trial of Mr. Edell's matter. What was the amount of the judgment as excessive profits in that proceeding? A. The Court determined that Mr. Edell had received excessive profits of \$150,000.

Q. Now, making the same kind of adjustment upon that amount, what credit for taxes would Mr. Edell have been entitled to?

258 A. The tax credit on the basis of \$150,000 in excess profits was \$72,773.72.

Q. That would therefore leave a net amount due the Government of what? A. \$77,226.28.

Q. Now, to that if interest is added to the same date, namely March 21, 1954, how much interest would Mr. Edell have owed the Government? A. The interest that would have been payable as of March 21, 1954, would be \$24,390.81.

Q. What, therefore, was the net cost to the defendant under the amount of the judgment awarded by the Tax Court on excessive profits of \$150,000, using the adjustments that you just testified to? A. The net cost as of March, 1954, would have been \$101,617.09.

Q. What savings then would have been obtained by you on the difference between the net cost to the defendant under the offer that was rejected, and the amount that was determined by the Tax Court?

A. The savings on a net basis would be \$35,909.51.

Q. Which, under your thirty percent contingent fee agreement would have amounted to an attorney's fee of what amount? A. \$10,772.85.

259 MR. MILLER: I will offer into evidence, Your Honor, the three exhibits being the posters, and I will offer to furnish at least typescript copies thereof to counsel and the Court.

THE COURT: Very well. Admitted.

(Thereupon, Plaintiff's Exhibits Nos. 17, 18 and 28, respectively, having previously been marked for identification, were received in evidence.)

* * * * *

RECROSS EXAMINATION

BY MR. BERLOW:

Q. The figure, Mr. Casey, of \$137,526.60, is that the figure that you had in mind when you prepared this agreement with Mr. Edell for the first time? A. No.

Q. The figure of \$138,000, that was inserted in the agreement,

was inserted therein inadvertently? A. It was a mistake, typographical transposition.

Q. So that in your discussions with Mr. Edell, no reference was made to the item designated there as net cost to defendant, \$137,526?

A. No, no mention was made of that at all.

260 Q. Although that figure did in fact appear on the settlement proposal which Mr. Amann had received from Mr. Prentice? A. No, that figure did not appear on the settlement proposal which Mr. Amann received from Mr. Prentice.

Q. That figure did appear in a document prepared by Mr. Amann in which he related the settlement proposal to a determination of the net cost to the defendant? A. Yes.

Q. And that calculation of Mr. Amann's was the subject matter of some discussion between you and Mr. Edell? A. No, it was not the subject of any discussion until I found that the original agreement had contained this mistake, and in looking around Mr. Edell said he had in mind that it was a figure something like that that would be his net cost, and I looked through the papers and I found this memorandum and I wrote Mr. Edell a letter, which is in evidence as one of the exhibits, explaining that if he had \$138,000 it would have derived from this calculation of Mr. Amann's.

Q. But before you wrote Mr. Edell, he did say to you that he did have the figure of \$138,000 in mind because Mr. Amann's calculation had shown to him that the net cost to him was \$137,526, which rounded out to the nearest thousand is \$138,000? A. He said that he had a figure in that neighborhood in mind, yes.

261 Q. Now this chart that has been marked as Plaintiff's Exhibit 28, is based upon the settlement offer by the United States Department of Justice; is that right? A. No, it's --

Q. Well read (a), will you, and tell me what (a) says? (a) says: Final gross settlement offer by United States Department of Justice? A. That's what it says.

Q. And that refers to the offer made by Mr. Prentice to Mr. Amann? A. Yes.

Q. Now, taking this approach that you have taken in Exhibit 28 --

* * * * *

BY MR. BERLOW:

Q. . . . and putting it next to Plaintiff's Exhibit No. 18, which is the attorneys fees for reduction of income taxes, we have no chart which would show attorneys fees based on net dollar savings, assuming that the settlement offer by the United States Department of Justice, insofar as it was applicable to income tax, we have no chart which would that, do we? A. There were two separate proceedings, and the same calculations would be made. This is just a comparison.

Q. There were two separate proceedings? A. No matter how the settlement was made --

Q. My question is: We do not have such a chart, do we?
A. There is no such chart, no such comparison; that's right.

Q. We have no such chart. A. There is no relationship.

Q. But, if we took the settlement offer by the United States Department of Justice as the starting point for Plaintiff's Exhibit No. 28, and took the item in there that is applicable to income tax, then we would have to scrap Plaintiff's Exhibit 18 and calculate a new chart, would we not? A. Oh, no, no; we would calculate the same way.

Q. Now I said the item applicable to the income tax that was contained in the settlement offer by the U. S. Department of Justice, the item applicable would be the expenses which Mr. Prentice stated in his offer were allowable? A. I don't believe that would be applicable.

263 Q. But in fact, when it came time to settle the income tax case, the stipulation as to those expenses was applicable to the penny; was it not? A. The stipulation as determined by the Tax Court, yes, was accepted to the penny.

Q. And that stipulation eliminated from the case before Judge Heron any question as to the expenses that were proposed by Mr. Prentice, did it not? A. Well, at that time there was no question of expenses proposed by Mr. Prentice. It was a question of expenses Mr. Edell

claimed to have sustained, and they had ranged from zero.

Q. That's correct. A. Which we had to pull from zero.

Q. At the time of the agreement which is the very subject matter of this suit, you had Mr. Prentice's settlement offer in front of you, did you not? A. Yes, I did.

Q. You had considered it? A. Yes.

Q. And that was the very basis for the agreements entered into between you and Mr. Edell? A. That was the basis for the \$183,000 figure.

Q. That's right. Now this new chart shows the computation of attorneys fees based on net dollar savings in renegotiation case, starting off with the settlement offer by the U. S. Department of Justice?

A. Yes.

264

Q. Now if in calculating the fee due under those agreements, the fee due for income taxes, if that fee were based upon this settlement offer, there would be no savings, would there? A. Yes, there would be, because the income tax had nothing to do with the settlement offer of renegotiation.

Q. If you took the expenses in the original settlement offer and introduced them into this chart, which is -- A. How could I have done that? I couldn't do that.

Q. Well if you did take the expenses that were stipulated -- A. I didn't take them, the Internal Revenue took them.

Q. I am talking about the preparation of this chart. You did take the expenses that were stipulated? A. No, we didn't. We took the final tax liability that was determined.

Q. But the expenses were the same as that which was stipulated in the Tax Court in the renegotiation? A. The determination of tax liability reflected the expenses stipulated in the Tax Court, yes.

Q. And if you started off with the amount claimed by the Government and eliminated from that what Mr. Prentice conceded to be the expenses you would end up here with a lesser figure than -- by here I

265 mean in the total of amount claimed by Government -- you would end up with a lesser figure than the \$124,000, and it would be a lesser figure than the amount determined so that the savings effected would be less than zero? A. No, that is not true. The Government, the Internal Revenue Service never claimed the tax liability based on the expenses which Mr. Prentice estimated. He never conceded the expenses. He estimated them for the purpose of arriving at his proposal.

Q. If you accept -- A. These were never before the Internal Revenue Service.

Q. But those expenses were accepted insofar as the computation of attorneys fees for the renegotiation were concerned; is that correct? A. The estimate -- the offer of \$183,000 was based on an estimate of expenses of \$60,000, yes.

Q. And those expenses were used in estimating the renegotiation fee in accordance with both of these charts; is that right? A. No, no; no, they are not.

* * * * *

266 BY MR. BERLOW:

Q. Both your agreement as to renegotiation and as to income taxes were entered into at the same time with Mr. Edell, were they not, originally? A. Yes, that's correct.

Q. And they were both discussed together, were they not? A. Well, they were discussed in sequence on the same afternoon.

Q. That's right. And you had only one settlement offer before you at the time of those discussions; isn't that right? A. I had one settlement offer on the renegotiation, yes.

Q. And no settlement offer on Internal Revenue? A. I had a determination of deficiency from Internal Revenue.

Q. But no settlement offer? A. And the tax agreement relates to determination of deficiency, not to a settlement offer; only the renegotiation agreement relates to a settlement offer.

267

Q. Well that is, the two separate agreements that are now in

court here, but in your deposition there is reference to one agreement which was destroyed. Now what I am asking you is in the original discussion whether or not there was a written agreement which was destroyed -- A. In the original agreement?

Q. In the original discussion, the only settlement offer that was discussed was the renegotiation settlement offer, and that was the basis for the entire agreement, including both renegotiation and income taxes? A. No. The original agreement whether oral or written --

Q. Your answer is no? A. . . . was of two parts, one tax based on determination of deficiency; the other renegotiation based on the settlement offer of the Justice Department.

Q. So that the expenses, even though they were later moved into the income tax matter, in disposing of the matter when you originally discussed it, they were not considered? A. We only considered the amount that the Government was demanding. We didn't know on what basis we would be able to settle or how we would be able to prove the expenses or the other items that had to be proven. They were not discussed.

268

Q. At the time of the agreement with Mr. Edell, was this settlement offer still pending or had it been rejected at that time? A. It was still pending at the time of the agreement.

Q. But at the time of the trial it was rejected? A. It was rejected by both parties a year-and-a-half before the trial, and I moved to bring the case to New York to accelerate the trial.

Q. Was it still pending when the agreement was changed from \$138,000 to \$183,000? A. Yes, it was pending when that occurred.

Q. You said Mr. Edell was hoping that there would be a finding that there were no excess profits? A. Certainly, and so was I.

Q. And so were you? A. So was I.

THE COURT: That all depended upon whether he was soliciting or not, didn't it?

THE WITNESS: Yes. Even if he hadn't solicited, the Government still contended that he was subject to a renegotiation, and we had our arguments based on two decisions of the Tax Court, they had one their way, which indicated that if you could establish he was rendering management services and wasn't soliciting orders, that the Renegotiation Statute was not intended to apply, and we made an argument that introduced testimony trying to support that line of argument.

269 THE COURT: You may proceed, Mr. Berlow.

* * * * *

EDWARD J. BRADY,

called as a witness on behalf of the plaintiff, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. DICKEY:

Q. Mr. Brady, would you give the Court and the reporter your full name, please sir? A. My name is Edward J. Brady, B-r-a-d-y.

Q. And where is your office presently located? A. 500 Fifth Avenue, New York 36, New York.

Q. Are you a Member of the Bar of any jurisdiction? A. I am a Member of the New York Bar, District of Columbia, and Federal Bar of the Southern and Eastern District.

270 Q. And how long have you been a member of the Bar of the first jurisdiction to which you were admitted? A. I have been a Member of the New York Bar since 1951.

Q. Are you a graduate of a recognized law school? A. I am a graduate of Fordham College and Fordham Law School.

Q. Do you also hold any other degrees, sir? A. I hold a Master's Degree in Accounting from New York University.

Q. And have you engaged in any professional activity other than the practice of law? A. I am a lecturer at the Practising Law Institute. I have lectured at the New York Institute of Taxation, and I have contributed articles to the Institute for Business Planning.

Q. Mr. Brady, have you also been engaged by an accounting firm at one time or another in your business career? A. Yes, I was tax manager for the New York office of a national accounting firm.

Q. What firm was that? A. Alexander Grant and Company.

Q. And when did you first come to work, or do you now work for Mr. Casey? A. I am a partner with him in the firm of Hall, Casey, 271 Dickler, Howley and Brady.

Q. Prior to becoming a partner, were you an employee of Mr. Casey's? A. Yes, I was.

Q. When did you first enter into that employment? A. Either in April or May, 1954.

Q. In connection with that employment did there come a time when you met Mr. Harry Edell, the defendant in this case? A. Yes, there did.

Q. When was that, to the best of your recollection? A. Approximately July, 1954.

Q. How did that come about, sir? What happened? A. Mr. Casey called me into his office, if I recall correctly, introduced me to Mr. Edell, and said we're going to handle his tax renegotiation matters.

Q. Did you then spend any time with Mr. Edell on that particular occasion outside the presence of Mr. Casey? A. Not on that day, no.

Q. Subsequently, did you have any dealings directly with Mr. Edell? A. Yes, I did.

Q. Would you describe briefly what those were? A. Well, Mr. Edell would come into the office quite often. When the files were delivered from Mr. Amann's office we were trying to sort them and get 272 them in some kind of chronological order, and I was trying to build up Mr. Edell's travel and entertainment expenses, and get that in some kind of a system since the previous attorney's accountants had not done that for the years 1943, '44 and '45, and I had to read through all the correspondence which was quite voluminous of Mr. Edell's to get a picture of the case and get some ideas of what had taken place in the

years 1943, '44 and '45, and try to determine the gross amount of income which this so-called partnership received during the years involved and then try to build up some kind of a record of expenses for the partnership in those years.

(Thereupon, Plaintiff's Exhibit No. 29 was marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, did you ever make any trips out of the City of New York on account of Mr. Edell's matter? A. Oh, yes.

Q. Would you describe with more particularity what those trips involved? A. Mr. Edell represented companies during the years 1943, '44 and '45 in the Greater New England area. During that time, I think it started about 1955, I started to visit the companies that he represented, Atlantic Knitting Mill, I visited I think a Mr. Finkelstein; Colonial Knife
273 was a Mr. Palentino; I visited a company of Wiley, Bickford, Sweet, and I think it was in Wooster, and I tried to ascertain from their records the amount of gross which Mr. Edell had received during the years 1943, '44 and '45, and would they be willing to be witnesses in a Tax Court case, if one did occur on this renegotiation problem.

Q. Were you able to determine from these visits what gross payments they made to Mr. Edell? A. Not exactly, no.

Q. Were you able to get any of the persons that you visited to agree to testify in the renegotiation case for Mr. Edell? A. Yes, Mr. Palentino of Colonial Knife agreed to testify, a Jack Owen and Joe Ahern I think his name is, or Heron.

Q. Now going back a minute to your efforts in going through the correspondence and other material that was delivered I believe you said by Mr. Amann to your office? A. Well not himself, but his office.

Q. His office? A. Yes, sir.

Q. Let me show you a folder which has been marked for identification as Plaintiff's Exhibit No. 29, and ask you to take a look at the contents thereof, and do you recognize the contents of that folder?

Q. What are the contents there, Mr. Brady? A. They are my work sheets which I prepared in November 4, 1954, trying to build up Mr. Edell's travel and entertainment expenses by going through the various correspondence to the companies to see which cities he was in on certain days at the time.

Q. And do these various work sheets reflect what you were able to summarize from the various, very voluminous correspondence and other files that were given to you by Mr. Edell and by Mr. Amann's office? A. Yes, they do.

MR. DICKEY: I would like to offer this in evidence, Your Honor, as Plaintiff's Exhibit No. 29.

THE COURT: Have you seen this, Mr. Berlow?

MR. BERLOW: Yes. I have no objection, Your Honor.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 29, previously marked for identification, was received in evidence.)

BY MR. DICKEY:

Q. Incidentally, Mr. Brady, do you recall at any time in working on Mr. Edell's matter when you were in Washington, D. C. and Worcester, Massachusetts on the same day? A. No.

Q. Were you in Washington, D. C. and Worcester on succeeding days? A. No. The reason -- can I explain why they seem to be worried about that?

275 Q. Were you here this morning? A. Yes.

Q. Would you explain that to the Court, please? A. I said on November 14th, \$100.15 which is a check to the United States Treasury Department for photographing the records in the Fine, Wolff and French case so that we could properly prepare the case. We have those photo-stats here today.

Q. So that did not reflect at the time that you were here and also in Worcester on the same day? A. No.

Q. Now Mr. Brady, referring again to Plaintiff's Exhibit 29, did

you total the number of trips that you were able to show or the number of visits that you were able to show Mr. Edell made by year on your recalculation or your recapitulation from the record? A. Yes. For the year 1943, I had Mr. Edell made 81 trips; in '44 he made 113 trips; and in '45 he made 27 trips.

Q. Why were there so few in 1945, sir? A. Well, the war terminated in 1945 and Mr. Edell's business went out with the termination of the war.

276 Q. Did there come a time when you had discussions with the Internal Revenue Service with regard to Mr. Edell's income tax matter? A. Yes, it did.

Q. And did you discuss the travel and expense items in these meetings? A. Yes, I did.

Q. With whom did you speak, sir? A. Mr. David Korr, Appellate Staff of the Treasury Department, 90 Church Street.

Q. Is he what is commonly called a conferee? A. No.

Q. What is his function? A. He is appellate.

Q. He is on the Appellate Staff. And from what report was he considering, or were you considering with him when you were there? He is not the examining agent, is he? A. No.

Q. Did he have a Revenue Agent's report, as far as you know? A. Yes.

Q. Had there been a deficiency determined as a result of the Revenue Agent's report? A. Yes.

277 Q. And were your discussions with Mr. Korr relative to attempting to lower that deficiency? A. Yes.

Q. Do you recall any conversations with Mr. Korr with relation to the expense items? A. Yes.

* * * * *

Q. Mr. Brady, did you have a Power of Attorney to represent Mr. Edell in this case? A. In the tax matter?

Q. Yes, sir. A. I got that in May, 1958.

Q. I see. Have you had many discussions with Mr. Edell with regard to the tax matter? A. Yes.

Q. Did he know, had he asked you to discuss the matter with the Internal Revenue Service? A. Yes, sir.

Q. Were you appearing there on his behalf? A. Yes, sir.

278 Q. I again ask the question as to the relation of the conversation, Your Honor.

THE COURT: Was this after he had given you the power of attorney or before, these discussions that you are being asked about?

MR. BERLOW: We have the power of attorney here, Your Honor.

THE WITNESS: The discussions I had with Mr. Edell was before he gave me the power of attorney.

THE COURT: I thought the discussions that you are being asked to testify about were something that went on down at the Bureau.

THE WITNESS: Yes, ma'am.

MR. BERLOW: This is dated May 20, 1958.

THE WITNESS: Right.

THE COURT: Well, I will overrule the objection.

* * * * *

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(Thereupon, Plaintiff's Exhibit No. 30 was marked for identification.)

(Thereupon, Plaintiff's Exhibit No. 31 was marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, I will hand you what has been identified as Plaintiff's Exhibit No. 31, which is a Power of Attorney dated July 28, 1954, from Mr. Harry Edell to Mr. William J. Casey. Have you ever seen that or a copy of it prior to this time? A. Yes, I have.

Q. Do you know of your own knowledge whether that was filed with the Internal Revenue Service? A. Yes, it was.

Q. Does that Power contain the right of substitution of attorney? A. It certainly does.

MR. DICKEY: I would like to move the admission of this in evidence, Your Honor.

THE COURT: Do you want to see it, Mr. Berlow?

MR. BERLOW: Yes, Your Honor. You can proceed, though.

BY MR. DICKEY:

Q. Mr. Brady, I show you what has been marked Plaintiff's Exhibit No. 30. Have you ever seen that document or a copy of it before?

280 A. Yes, sir.

Q. Was a copy of it filed or exhibited to the Internal Revenue Service by you? A. Yes, sir.

Q. Is this a substitution of you as attorney by Mr. Casey?

A. This gives me the power to talk to the agent, yes.

Q. Right. And is this executed by Mr. Casey before a Notary?

A. Yes, sir.

MR. DICKEY: I move the admission of this into evidence.

BY MR. DICKEY:

Q. By the way, what is the date of this? It is dated 9 December 1957; is that correct? A. That's correct.

Q. Now Mr. Brady, subsequent to the ninth day of December, 1957, did you have any discussions with Mr. Korr with regard to the tax deficiency or the assessment of Mr. Edell? A. Yes, I did.

Q. Would you relate what they were and approximately the time and place where they occurred? A. They occurred -- the meetings were held at 90 Church Street, New York City, which is the Appellate -- it was at that time the Appellate Internal Revenue Service, for the First

281 and Second, and these meetings concerned itself with deficiency for the years 1943, '44 and '45 in regard to the so-called partnership return of Harry Edell, in regard to the travel and entertainment expenses which Mr. Edell took off his tax return, in regard to the salary paid his wife which he claimed, and which at the same time he through in an 843, protective claim in case they found out the wife didn't work for Mr. Edell so withholding tax on her salary would be saved.

It concerned the problems of no books and records and roundly estimating expenses on the tax returns, it concerned cash outlays received from various companies during the years 1943, '44 and '45.

Q. This was then subsequent to the renegotiation case, sir?

A. Yes, it was.

Q. Were you able to get Mr. Korr to accept any figure as settlement, in settlement as far as the expenses incurred by Mr. Edell during the various years? A. Yes, I was.

Q. What was that amount? A. \$10,100.

Q. Were you able to get any additional amount? A. Right. I got his wife's salary, approximately \$4,000.

282 Q. For a total of approximately -- A. \$14,000.

Q. And that was the way this was arrived at in your negotiations with Mr. Korr? A. Right.

Q. Were you at all times working under the direction and reporting to Mr. Casey? A. Yes.

Q. Had you been in consultation and did you advise Mr. Edell of what you were doing? A. Yes.

Q. Now jumping back for a minute to the work you did with regard to witnesses in the renegotiation case, did you ever advise Mr. Edell as to what you had done with regard to interviewing of witnesses? A. Yes.

MR. DICKEY: I ask that this be marked as the next exhibit.

(Thereupon, Plaintiff's Exhibit No. 32 was marked for identification.)

BY MR. DICKEY:

Q. With regard to this advice to Mr. Edell, did he at that time or at any time until this case came up, make any protest with regard to the work you were doing on that matter? A. No. He was very complimentary at certain times.

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(Thereupon, Plaintiff's Exhibits Nos. 33 and 34, respectively, were marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, I hand you what has been marked Plaintiff's Exhibit No. 32 for identification, being a copy of a letter addressed to

Mr. Harry Edell, dated November 21, 1955. Do you recall ever seeing the original of that letter, sir? A. Yes.

Q. Is the copy of that letter from the files of your law office?

A. Yes, sir.

Q. Is that a report to Mr. Edell of a trip to Worcester and to the New England States? A. Yes, sir.

Q. Was this a report that you sent to Mr. Edell? A. Yes, sir.

MR. DICKEY: I move its admission into evidence, Your Honor.

THE COURT: Let's see. You moved 30, 31, 32, 33 and 34?

MR. DICKEY: Yes, I have moved for the admission of 29 and 30, I believe.

THE DEPUTY CLERK: 29 is in. Mr. Berlow has No. 30.

284 MR. DICKEY: I have moved the admission, Your Honor, of 29, which is the power to Mr. Casey, and 30, which is the power to Mr. Brady.

THE COURT: Very well, admitted.

(Thereupon, Plaintiff's Exhibit No. 30, previously marked for identification, was received in evidence.)

MR. DICKEY: I am sorry, Your Honor, No. 30 is the power to Mr. Brady -- 29 is the folder -- 31 is the power to Mr. Casey.

THE COURT: No. 31 is admitted.

(Thereupon, Plaintiff's Exhibit No. 31, previously marked for identification, was received in evidence.)

MR. DICKEY: Your Honor, I have just moved the admission of 32 which is the copy of a letter from Mr. Brady to Mr. Edell.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 32, previously marked for identification, was received in evidence.)

BY MR. DICKEY:

Q. Mr. Brady, did you write to various persons who were previously officials of companies whom Mr. Edell represented asking them

to see you or to see if they would testify in the renegotiation case?

A. Yes, I did.

285 Q. Let me hand you a letter addressed to a Mr. Samuel West, dated October 6, 1955, which has been identified as Plaintiff's Exhibit No. 33. Did you write that letter? A. Yes, I did.

Q. And is that typical of the letters you wrote to various persons?

A. Yes, it is.

Q. And you also made personal visits to some of these persons?

A. Yes, I did.

Q. Did you also receive replies from some of the people by mail as well as having seen them personally? A. Yes, I did.

MR. DICKEY: I move the admission of Plaintiff's No. 33.

THE COURT: Admitted.

(Thereupon, Plaintiff's Exhibit No. 33, previously marked for identification, was received in evidence.)

BY MR. DICKEY:

Q. I show you what has been identified as Plaintiff's Exhibit No. 34, which is a letter of October 27, 1955, addressed to William J. Casey, 60 East 42nd Street, attention Mr. Edward J. Brady, signed by Brewer and Company, Joseph C. Hearn, Sales Manager. Have you seen that letter before? A. Yes, I have.

286 Q. Was that letter received by you in the regular course of business? A. Yes, it was.

Q. Is this a letter from Mr. Hearn stating that he would be happy to discuss the possibility of his testifying before the Renegotiation Board --

A. Yes, it was.

Q. In the Tax Court on the renegotiation case? A. Yes.

Q. Now Mr. Brady, do you have any estimate of the time which you spent in working on Mr. Edell's two problems, renegotiation and taxation? A. Yes, I do.

Q. From 1954 to the last time you worked on it? A. Yes.

Q. Would you tell me for 1954 what your estimate of time is and

how you arrive at that, sir? A. I had approximately 120 hours in 1954, and I arrived at this estimate by thinking back and computing how much time it had cost me to read the voluminous correspondence files which Mr. Edell had, and to put this T and E chart together.

Q. What does T and E mean? A. Travel and entertainment chart together, to find out where Mr. Edell was since he hadn't any books and records, and try to get the files in general working order.

287 Q. Now what is your estimate of time for 1955, sir? A. I had approximately 240 hours in 1955, and that consisted of research concerning the Fine, Wolff and French decisions, taking various trips to New England interviewing witnesses, trying to run them down, trying to find out what happened to the companies, what happened to the books and records of the companies that had gone out of business, and also trying to ascertain what records the F.B.I. took from those companies that were still in existence so we knew where we stood in regards to renegotiation matters.

Q. Would you tell us for 1956 what amount of time you spent, sir? A. Approximately 245 hours in the year 1956, and that concerns itself with the trial of the Tax Court, it concerns itself with the computation of the tax credit, and the computation of the figures he used in determining net cash money due the United States Government under the renegotiation case, and the release of the funds for the escrow.

Q. Did you do this work under the supervision and direction of Mr. Casey? A. At all times it was under the supervision and direction of Mr. Casey.

Q. In 1957, what amount of time did you spend? A. Approximately 80 hours in 1957, and that was spent mostly with Mr. David Korr, the
288 Internal Revenue Service, and trying to beat down the revenue agent's determination of tax liability.

Q. And did you spend any other time, sir? A. Approximately 60 hours in 1958, concerning the tax matters for the years 1943, '44 and '45.

Q. Mr. Brady, what are those totals, what do those years total in sum? A. Approximately 740 hours.

Q. And at that time do you know what your time was billed for by Mr. Casey? A. Yes, \$20 an hour.

Q. Were you regularly receiving or was the firm receiving that amount of money for the services which you rendered to clients on an hourly basis? A. Yes, it was.

Q. Have you calculated what \$20 an hour is times those numbers of hours? A. Yes, I have.

Q. How much is that? A. \$14,400.

THE COURT: Plaintiff's 34 is admitted. I believe you offered that and I didn't rule on it.

(Thereupon, Plaintiff's Exhibit No. 34, previously marked for identification, was received in evidence.)

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MR. DICKEY: May I have this marked?

(Thereupon, Plaintiff's Exhibit No. 35, was marked for identification.)

(Thereupon, Plaintiff's Exhibit No. 36, was marked for identification.)

BY MR. DICKEY:

Q. Mr. Brady, I hand you an envelope containing some photostats. The envelope is labeled Exhibit No. 36, for identification. Would you look at the photostats and tell us what they are? A. These are the complete records of the Fine, the French and the Wolff decisions, which were the three main cases in regard to Mr. Edell's renegotiation problem.

Q. Were those the records that you paid the \$150 to have photostated -- at the Treasury Department -- A. \$100.50.

Q. \$100.50. A. Yes.

Q. Now, did you go through these various records of the briefs and transcripts and records, and make an analysis of them? A. Yes, I did.

Q. I hand you what has been identified as Plaintiff's Exhibit No. 35, consisting of 15 pages. Is that an analysis that you made? A. Yes,

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it is.

Q. And is that some of the work which you have testified to here today? A. Yes, it is.

MR. DICKEY: I move the admission of Plaintiff's 35 and Plaintiff's 36, Your Honor.

* * * * *

MR. DICKEY: Is it all right if I proceed on something else, gentlemen, as far as you are concerned?

MR. BERLOW: Yes, please do.

BY MR. DICKEY:

Q. Mr. Brady, I will hand you what has been identified as Plaintiff's Exhibit No. 19, and what is in evidence as Plaintiff's Exhibit No. 19. With particular reference to the fourth page thereof, dated October 7, 1957, and headed Disbursements -- A. Right.

Q. Under that you see a line, E. J. Brady, and various items?

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A. Right.

Q. Are all of the items, to your own knowledge, are all the items listed under your own name there items of expenses incurred by you on behalf of the representation of Mr. Edell? A. Yes, sir.

Q. Would you tell us about each of them, sir? A. Well, the trip to Providence most likely was to see Tony Palentino of Colonial Knife.

Q. Was he one of the witnesses who later testified in the re-negotiation case? A. Yes.

Q. For Mr. Edell? A. Right.

Travel, Washington, that was either to see Mr. Prentice or Leathers.

Q. Are they the two Justice Department men? A. Yes, they were the attorneys for the Justice Department in charge of the case, to ascertain the movement on the calendar to see if we could get some orderly processes for the trial of this case.

Travel to Worcester was either to see Blue or Wiley or Joe Shea or Owen, or somebody else in that area.

The next thing is United States Treasury check, \$100, for the photostats for the French, Fine and Wolff decisions.

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Travel to Washington was most likely to see Prentice and Leathers to try to get -- then trying to find out how we could proceed because of lack of documents.

And the rest of the travel to Washington was of the same substance.

Q. Now I believe I asked you the question, whether these expenses are true and accurate accounts to the best of your knowledge and belief?

A. They are.

THE COURT: Had you finished with 35 and 36, Mr. Berlow?

MR. BERLOW: Yes, Your Honor. I have no objection to them.

THE COURT: Very well. Plaintiff's 35 and 36 are admitted.

(Thereupon, Plaintiff's Nos. 35 and 36, respectively, previously marked for identification, were received in evidence.)

BY MR. DICKEY:

Q. Mr. Brady, were you ever present when Mr. Edell requested you or Mr. Casey or both to stop working on the 1946 and 1947 tax settlement? A. Yes. He told us they were in the hands of the accountants, leave them there.

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Q. Did he also advise you at any time that Mr. Williams was acting as his alter ego and would have to approve any settlement for 1943, '44 and '45? A. Yes, he did.

Q. Did you have any discussions or were there any discussions had in your presence with Mr. Williams where he did approve the settlement for 1943, '44 and '45? A. Mr. Williams approved the settlements for '43, '44 and '45.

Q. Did you attend the conference with Mr. Williams with Mr. Korr? A. Right.

Q. When was that, sir? A. Oh, 1958.

Q. In the early part of 1958, or the middle of 1958, or do you recall? A. I don't recall. It was 1958.

Q. Where was that conference held? A. 90 Church Street.

Q. And at that conference, did Mr. Williams review with Mr. Korr the settlement that you had effected of the deficiency? A. Yes, he did.

294 Q. Was Mr. Williams able to obtain any better settlement at that conference? A. No, he could not.

Q. Did he ultimately recommend or did he ultimately tell you that he was going to recommend the settlement which you and Mr. Casey had effected for 1943, 1944 and 1945? A. Yes, he did.

Q. Was that tax settlement made? A. Yes, it was.

Q. And approved by Mr. Williams and by Mr. Edell?
A. Yes, it was.

* * * * *

[Filed April 24, 1963]

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Washington, D. C.
November 26, 1962

* * * * *

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EDWARD J. BRADY

resumed the stand and testified further as follows:

DIRECT EXAMINATION
(Resumed)

BY MR. DICKEY:

Q. You are the same Mr. Edward Brady who was testifying here when court recessed on Wednesday, sir? A. Yes, I am.

Q. Now, Mr. Brady, did there come a time in your representation of Mr. Edell when you met Mr. Laurens Williams? A. Yes, I did.

Q. Would you tell me approximately what date that was?
A. It was early in 1958.

Q. How did that meeting come about, sir? A. Mr. Edell telephoned and said that he was bringing in a Mr. Williams and he would like to have an appointment and I arranged an appointment and Mr. Edell and Mr. Williams came into the office.

Q. Mr. Edell and Mr. Williams were both present at the same time? A. Yes, they were.

302 Q. And how was Mr. Williams' presence explained to you by Mr. Edell? A. Well, Mr. Edell and Mr. Williams explained to me that Mr. Williams was not acting as an attorney in this case, he was acting as Mr. Edell's alter ego and he just wanted to make the decisions for Mr. Edell because Mr. Edell was under a nervous strain and wanted to take a vacation.

Q. I believe you testified you met with Mr. Williams and Mr. Korr? A. Yes, I did.

Q. Was it on that basis that you met there, that is, Mr. Williams was acting as Mr. Edell's alter ego and not acting as an attorney? A. Yes.

MR. DICKEY: You may examine.

CROSS EXAMINATION

BY MR. BERLOW:

Q. When was it in 1958, did you mention the month in 1958 when Mr. Williams came in? A. No, I said early in 1958.

Q. That would be in January or February? A. In that area, yes.

Q. When was it that the renegotiation case was terminated? A. I think the time for appeal expired about October 1957.

303 Q. So that this was approximately fourteen months after the termination of the renegotiation matter? A. No, I say two months.

Q. This was two months after the termination. When was the renegotiation case actually tried? A. May 1957.

Q. When was Judge Harron's opinion rendered? A. In June -- no, May of 1956 and June 1957.

Q. So how long was it after Judge Harron's opinion, June 1957 to December of 1958? A. No, to January 1958.

Q. January of 1958, and Judge Harron's opinion was in June of 1956? A. '57, I think.

Q. Let's get these dates straight. The case was tried before Judge Harron May 9 of 1956. How long after that, was it, before she rendered her opinion? A. I think the opinion was rendered in June of 1957.

Q. It was a year and a half, a year and one month after that before the Judge rendered her opinion in the matter? A. I believe so, yes.

Q. And after the trial of the renegotiation matter, did you begin to do any work on the income tax matter? A. I started to prepare schedules on the income tax matter, but that was as far as I could proceed.

304 Q. You weren't able to do anything until such time as the Judge had rendered her opinion and you had some finding in the renegotiation matter? A. Yes, that is correct.

Q. And that was the reason why you did not commence work on the income tax matter, because of the relationship between it and the renegotiation matter? A. Well, we commenced work on it, but we couldn't enter formal negotiations with the Internal Revenue Service until the decision of Judge Harron.

Q. What was the work that you did before the decision of Judge Harron was rendered? A. We tried to investigate further this partnership problem of Mr. Edell's, how it would affect his tax matter, also the salary problem which he had with his wife, we had filed an 843 claim for refund on her salary for the years involved and to see how it would affect the whole picture with the Internal Revenue Service.

* * * * *

305 Q. Do you know what the \$14,000 in renegotiation consisted of? A. Expenses.

Q. And do you know what those expenses were? A. All of his expenses.

Q. Including the salary of Mina Edell? A. It could not have.

Q. So there was no definite finding on that, one way or the other? A. That is correct.

Q. Now, in addition to the salary of Mina Edell which was \$3,900, there would be another \$10,000 of expenses, approximately, that was accepted both in the renegotiation and in the income tax matter, is that correct? A. That was accepted in the income tax matter.

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Q. And who was it that you discussed that with, what was the name of the man with whom you discussed the income tax matter?

A. David Korr.

Q. You testified, before we adjourned last week, that you had prepared some detailed travel statements showing Mr. Edell's expenses. Do you recall that? A. Yes, sir.

Q. And that was marked as an exhibit -- your work product was marked as an exhibit in this case? A. Yes, sir.

Q. And to clear the record on that matter, it was Plaintiff's Exhibit No. 29 which is "Analysis of Travel 1943-1945." Would you tell us what that was? A. Mr. Edell had no records and what I did was read all the correspondence from the eight or nine companies that were involved and try to piece together from the correspondence the various places he had been in servicing the nine companies, for the years 1943, 1944 and 1945.

Q. These nine companies were located in different parts of the United States, were they not? A. Most of them were centered in New England.

Q. Where was his place of business, in New York? A. In New York.

Q. And there was travel involved to and from these places?

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A. Yes, there was.

Q. And was the fact that he had expenses in connection with going to and from those places questioned at any time by any government official? A. Yes, sir.

Q. Did they contend he went from, let us say, New York to Worcester at no cost to himself? A. They disallowed them, the Internal Revenue Service, for lack of proof.

Q. But they didn't contend that he went on the railroad or by automobile at no charge, did they? A. No, they did not contend.

Q. It was just a question of not having the records? A. No proof.

Q. There was adequate proof, wasn't there, that he had done this traveling? A. There was proof as far as I could sustain it, yes.

Q. The only question was, there were no vouchers or tickets or items of that sort showing the actual dollar cost of each trip? A. Yes, plus the amount that he took on his tax return, which was just a flat figure.

Q. So, what you had to do and you spent a great number of hours doing it, was you made a determination of the number of trips, the place to which the trip was made and then you estimated what the railroad fare was during that period of time? A. That is correct?

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Q. My question is, isn't it a fact that the figures proposed by the government in settling the renegotiation matter were also used as a basis for determining the tax liability as well? A. No.

Q. And did you ever see any document from Mr. Amann in which that was done? My question may not be clear. Read that, first, Plaintiff's Exhibit 3, Mr. Amann says in the second sentence:

"I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week."

Now, does that refresh your recollection that later in the week or at some later time, Mr. Amann did send the tax figures based upon the Prentice proposal for settlement? A. I couldn't answer it, this letter was addressed to Mr. Edell. But we never saw it.

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Q. You never saw the letter which had reference to the tax liability? A. No, I never did.

Q. Now, when you saw this letter, Plaintiff's Exhibit 3, do you recall inquiring of Mr. Edell as to whether or not Mr. Amann had in fact made this calculation that he said he would make? A. No, I never inquired of Mr. Edell.

Q. Do you recall Mr. Casey ever making inquiry of Mr. Edell in that regard? A. No.

Q. Let me ask you this question. Did it occur to you, when you read this letter in September of 1954, when you said you read it, when you read that second sentence, did it occur to you that this computation that Mr. Amann said he would send might be of some help or assistance to you? A. No.

Q. As a matter of fact, you are a certified -- an accountant and an attorney? A. Yes, sir.

Q. And specialize in income tax matters? A. That is correct.

319 Q. Could you tell me, isn't it a fact that tax figures could be given, based upon the Prentice proposal? A. That is correct, they could.

Q. And that you could determine, carrying the Prentice proposal in renegotiation, carrying those figures through into income tax, you could make a determination of what the income tax liability would be?

A. That is correct, if the Prentice proposal was acceptable to the client.

Q. And when you discussed this matter with Mr. Edell, did he ever bring to your attention at any time that it was his understanding that the Prentice proposal was the basis for your fee, both insofar as renegotiation and income tax was concerned? A. The Prentice proposal --

Q. Did Mr. Edell bring that to your attention and make that contention to you? A. Oh, he told me we were on a contingency basis, yes, but he didn't say which way.

Q. And the contingency basis originated and its basis was the Prentice proposal, was it not? A. It was not.

Q. It was the Prentice proposal sofar as renegotiation was concerned? A. Yes.

Q. But it was not the Prentice proposal insofar as income tax was concerned? A. That is correct.

320 Q. Even though you have just testified you could use the Prentice proposal as the basis for both, could you not? A. No.

* * * * *

THE WITNESS: The Prentice proposal is not binding upon the Internal Revenue Service, it is two different agencies involved all together, so what might be acceptable to the United States Government on renegotiation, certainly does not bind the Internal Revenue Service.

BY MR. BERLOW: You say there are two agencies involved, but the parties are the same, are they not? A. No, they are not.

Q. Was Harry Edell the defendant in the income tax matter?

A. Yes.

Q. Was he the defendant in the renegotiation matter? A. Yes.

321 Q. Was the United States Government the plaintiff in the renegotiation matter? A. No, the United States Government through the War Adjustment Contract Board was the plaintiff.

Q. But what was the style of the case in the renegotiation case, wasn't it Harry Edell and Louis Edell v. The United States of America?

A. Yes, but originally the complainant was the War Adjustment Board

Q. And isn't it a fact that in the income tax matter, when it was finally disposed of, that Internal Revenue accepted precisely the same penny figure as to expenses that had been determined in the amount in the proceedings involving the same parties before Judge Harron?

A. Accepted the same amount, yes.

Q. Now, the basis for the income tax agreement, you say, was not the Prentice proposal? A. No, it was the Revenue Agent's Report.

Q. I show you Plaintiff's Exhibit 18 -- it was the Revenue Agent's Report and so much of that report as referred to proposed deficiencies, is that correct? A. That is correct.

Q. Now, pointing to this chart, Plaintiff's Exhibit 18, I ask you whether it was \$124,611.42? A. The original Revenue Agent's Report was \$175,000.

Q. And that appears nowhere on this chart? A. That is correct.

322 Q. In other words, your starting figure was a figure different from the one which is used which was in the Internal Revenue Agent's Report -- the starting figure in Plaintiff's 18 was not the figure used in the Internal Revenue Agent's Report? A. That is correct.

Q. And the figure which was the basis for the agreement is not used in this chart at all, is it, Plaintiff's Exhibit 18? A. No.

Q. Let me show you a letter to Mr. Edell, dated March 8, from Douglas Amann, which is attached to the letter that I originally showed you, dated February 1, also from Douglas Amann to Mr. Edell.

A. Right.

Q. And I ask you to read that and I ask you if that does not refresh your recollection that Mr. Amann had in fact calculated the income tax due based upon the Prentice proposal and set forth in detail, year by year, the income tax liability which Mr. Edell would have incurred, had the Prentice proposal been accepted?

MR. DICKEY: Is this letter in evidence?

MR. BERLOW: You may look at it. I am sorry I didn't show it to you.

MR. MILLER: May we have it marked in the exhibits?

MR. BERLOW: I am just asking whether it refreshes his recollection. If it doesn't refresh his recollection, then that will be the end of it.

MR. MILLER: Whether it does or doesn't, the record won't show unless it is at least marked for identification.

MR. BERLOW: I have no objection to that being done.

* * * * *

THE CLERK: Plaintiff's Exhibit No. 37 marked for identification.

(Letter dated March 8, 1954, to Mr. Edell from Mr. Amann, was marked Plaintiff's Exhibit No. 37 for identification.)

BY MR. BERLOW:

Q. My question, I am sure you have forgotten it, maybe I have, my question was, now that you have finished reading that letter which has been marked as Plaintiff's Exhibit 37, my question is: Doesn't that refresh your recollection that in September of 1954, after the fee arrangement was made with Mr. Edell, at sometime around that time, doesn't that refresh your recollection that it was brought to your attention that Mr. Amann had in fact calculated Mr. Edell's tax liability, income tax liability, based upon the Prentice proposal? A. No, it doesn't.

Q. Prior to today, have you ever seen that letter before?

A. No, I have not.

Q. But you did see Plaintiff's -- A. Three?

Q. Three. A. Yes, I have.

Q. And isn't it a fact that -- Plaintiff's 3 is dated February 1, is it not? A. That is correct.

Q. And in Plaintiff's 3, Mr. Amann says, 'I cannot, however, at this time give you any tax figures although I hope to be able to do so the latter part of this week.' My question is, does Plaintiff's Exhibit 37, the letter of March 8 from Mr. Amann, contain the tax figures, which you would understand to be tax figures?

* * * * *

325 BY MR. BERLOW:

Q. Now, Mr. Brady, you testified that you spent a total of eighty hours with Mr. Korr. Mr. Korr was employed by the Internal Revenue Service, was he not? A. That is correct.

Q. And your discussions with him centered entirely around the income tax matter, did they not? A. Yes.

Q. And one aspect of the income tax matter was the family partnership arrangement? A. That is correct.

Q. And the other aspect was the expenses incurred by Mr. Edell in the course of earning this income? A. Not only that.

326 Q. That was the second issue, is that right? A. That is correct.

Q. And would you say that those were two of the principal issues? A. No, I think the fraud issue was a third issue.

Q. But so far as the figures and calculations were concerned, were there any calculations and estimates required in connection with the family partnership matter? A. Yes, there were.

Q. And were there calculations required in connection with the expense matter? A. Yes, there were.

Q. Now, what were the calculations that were necessary in regard to the expense matter? A. The calculation is to see what it would cost the taxpayer in all instances.

Q. Now, in this case, what were the arithmetical or mathematical calculations in regard to the expenses that you brought to the attention

of Mr. Korr? A. I brought to the attention of Mr. Korr the analysis we had done in regard to his travel and entertainment. I brought to the attention of Mr. Korr the companies he had serviced in New England, the amount of time he had to spend in various cities like Washington and Philadelphia, dealing with the Quartermaster. I brought to the

327 attention of Mr. Korr, to serve nine companies, you couldn't do this by yourself. I brought to the attention of Mr. Korr, in order to do this kind of work, a man needed to have expenses. I also brought to the attention of Mr. Korr that the taxpayer, in doing this, had not kept adequate books and records but he had depended upon an accountant, so no penalty should be assessed. I brought to Mr. Korr the problems of Louis Edell and the partnership, I explained away the securities which he had in his sister's name and used an affidavit to get that explained away, and overcame the record.

Q. What did Mr. Korr make reference to, did he specifically refer -- let me put it this way: Isn't it a fact that Mr. Korr specifically made reference to the stipulation that was entered into in the renegotiation case? A. No.

Q. He, at no time, made reference to it? A. No.

Q. And the fact that the amount settled upon was the same as that in the renegotiation case was a pure coincidence? A. Coincidence, I wouldn't want to call it, it is just that he had a copy of the Tax Court record, the same as we did.

Q. The renegotiation matter? A. Yes.

Q. And had read it? A. Right.

328 Q. He indicated to you he had read it? A. Oh, yes.

Q. And he indicated that to you prior to the time that you settled with him on this \$14,000 figure for expenses? A. That is correct.

Q. But he never mentioned it to you? A. That is correct.

Q. He just said that he had read it, period. A. He said he was familiar with the things that went on in the Tax Court, especially when they argued the case for the partnership.

Q. The Tax Court and the renegotiation matter? A. That is correct.

Q. And he said he was familiar with the expense stipulation that was entered into in the renegotiation matter? A. No, he said he was familiar with the testimony of the FBI agent with regard to Louis Edell.

Q. Louis Edell has to do with the partnership, does it not? A. That is right.

Q. Well, I am talking about the expenses. A. He never said anything about the expenses in this stipulation.

329 Q. He never brought that to your attention? A. No, he brought the record to my attention, yes.

Q. The record that you had stipulated to the \$14,000? A. No, the Tax Court record.

Q. Which contained this stipulation? A. I am not sure whether it contained it or not.

Q. Wasn't the stipulation filed in the Tax Court as to the \$14,000? A. I think it was.

Q. Did he bring that stipulation which was filed in the Tax Court record to your attention at any time? A. No, he did not.

Q. Did he indicate he had read that stipulation? A. Mr. Korr indicated he read the record.

Q. Now, you just mentioned this matter of Mr. Edell's sister and certain securities being transferred to her. A. Right.

Q. And that was mentioned to you by Mr. Korr, is that correct? A. That is correct.

Q. That had been done many years prior to any time you had commenced your discussions with Mr. Korr, wasn't it? A. It was part of the tax case.

Q. But it had been done many years previously, this transfer of securities, had it not? A. Oh, he had done it between 1943, '44 and '45.

* * * * *

332 Q. Isn't it a fact that Mrs. Edell, who did this typing, paid --
social security payments were made on her behalf? A. Oh, yes, that
is one of the problems.

333 Q. And withholding was taken at that time? A. That is right.

Q. And she paid her income tax on that? A. She also filed a
claim for refund.

Q. But she did pay income tax on the amount? A. Yes, and filed
a claim for a refund at the same time, to protect her claims.

* * * * *

REDIRECT EXAMINATION

BY MR. DICKEY:

Q. What has been marked as Plaintiff's Exhibit No. 37 for identi-
fication, I believe you testified that until this was shown to you in the
court-room today, you had never seen this before, is that correct?

A. That is correct.

Q. Mr. Brady, would you look at the second page of that exhibit,
the third paragraph thereof, and read that, please, aloud.

THE COURT: Is that the same paragraph that Mr. Berlow inquired
about?

MR. DICKEY: No, ma'am, he was inquiring about the calculations.
I am inquiring about what is said in the letter.

THE COURT: Well, now, this letter isn't in evidence. It is
marked for identification.

MR. DICKEY: I will offer it now, Your Honor, since they produced
it.

334 THE COURT: Mr. Berlow?

MR. BERLOW: I have no objection to their offering it in evidence
as part of their case.

THE COURT: Very well, admitted.

(Plaintiff's Exhibit No. 37 was received
in evidence.)

BY MR. DICKEY:

Q. Would you read the third paragraph on the second page of that letter? A. (Reading:)

"You will understand, of course, that there is no guaranty that the Internal Revenue Department will accept the items of expense which have been allowed by the Department of Justice. In the absence of definitive advices from them, however, there is no other basis on which I can calculate your approximate tax liability."

Q. Now, Mr. Brady, did the -- even the Department of Justice, did they allow the \$60,000-odd of expense put forth in the Prentice letter when you went to trial in this case, in the renegotiation case? A. No, they did not.

Q. And did you discuss with Mr. Korr, on the tax case, the expense items that were in the original Prentice report, at any time? A. No, I did not.

335 Q. Did you discuss with Mr. Korr the fact that there had been an allowance of \$14,000 in the renegotiation case? A. Yes, I did.

Q. So that you brought it up rather than Mr. Korr bringing it up? A. That is correct.

Q. What did Mr. Korr say with regard to this? A. That is not binding on them, referring to the Treasury Department.

Q. Now, with regard to the Exhibit appearing over here, "Attorney's Fees For Reduction Of Income Taxes," which is Plaintiff's Exhibit No. 18, the figures under the column "Amount Claimed By Government" totaling \$124,000, how were they arrived at, sir? Let me withdraw that. Were these figures arrived at in your discussions with Mr. Korr? A. Yes.

Q. And the original figures, the total original figure was \$175,000 and some dollars? A. That is correct.

Q. And how did Mr. Korr arrive at these figures, if he told you? A. By taking the excessive profits out for the years 1943, '44 and '45.

Q. In other words, by reducing the amount of income by the amount that Mr. Edell had to pay back in each year under the renegotiation case? A. That is right, as determined, yes.

* * * * *

THE CLERK: Plaintiff's Exhibit No. 38 marked for identification.

(Computations of Mr. Brady, on yellow sheet, was marked Plaintiff's Exhibit No. 38 for identification.)

BY MR. DICKEY:

Q. I hand you what has been marked as Plaintiff's Exhibit No. 38 for identification and ask if you have ever seen that paper before?

A. Yes, I have.

Q. Are those your calculations on that paper, is that your writing on that paper? A. Yes, it is.

Q. When did you prepare that, sir? A. Last week.

Q. Now, would you relate from that paper, what was the original deficiency claimed by the government prior to the renegotiation case and the original Revenue Agent's Report for 1943? A. \$19,393.81.

Q. 1944? A. \$50,712.85.

Q. 1945? A. \$105,837.63.

337 Q. And the total was? A. \$175,944.29.

Q. The ultimate deficiency assessed was how much, sir?
A. \$175,944.29.

Q. That was on the deficiency assessed in the original Revenue Agent's Report. A. That is correct.

Q. Then in your discussions with Mr. Korr, he gave credit for each of the years of the renegotiation case and the amount paid back by Mr. Edell? A. That is correct.

Q. The figure \$16,406.52 -- or whose figure is \$16,406.52?
A. That is the Revenue Agent's.

Q. That was then made by Mr. Korr in your discussions with him? A. That is correct.

Q. Is the same thing true with the figure \$32,907.71? A. That is correct.

Q. And \$75,297.19? A. That is correct.

Q. The total then would be \$124,611.42? A. Correct.

Q. In your calculation of the fee, are you taking the savings between the original Revenue Agent's Report -- A. No, we are not.

338 Q. -- and the ultimate amount paid? A. No, we are not.

Q. What are you doing, for purposes of calculation of the figure?
A. We are adjusting to the Revenue Agent's Report, after the excessive profits case, so the adjusted Revenue Agent's Report and the difference between that and the amount as finally determined would be our figure.

Q. Now, Mr. Brady, you were asked as to whether you had ever discussed, I think the question was, "have you ever discussed this matter with Mina Edell?" A. Right.

Q. Or this entire matter with Mina Edell, I am paraphrasing Mr. Berlow's question, and your answer was no. Would you tell us whether you ever attempted to? A. No, because she was divorced from Mr. Edell at the time I got into the case.

Q. Did Mr. Edell advise you not to talk to her? A. That is correct.

* * * * *

BY MR. DICKEY:

339 Q. Mr. Brady, in answer to Mr. Berlow, when he asked if the ultimate tax figure could have been negotiated from the Prentice proposal, in the renegotiation figure, I believe you said yes, is that correct? A. On a hypothetical basis, yes.

Q. On a hypothetical basis? A. Yes.

Q. What hypothesis would be required to make such a calculation?
A. The hypothesis that everything accepted by the Department of Justice would be acceptable by the Internal Revenue Service and that everybody agreed to settling as proposed by Prentice.

Q. And in the Exhibit No. 37, is that made plain by Mr. Amann in his letter of March 8, 1954?

Let me withdraw the question and put it another way: Are the Amann calculations made on the basis that the Internal Revenue Service

would accept the Prentice figures in the renegotiation's original \$183,000 proposal? A. Yes, according to this letter.

Q. And does the Amann letter also indicate that there is no assurance that the Internal Revenue would do this? A. Yes, he does.

Q. In the brief of Mr. Amann which Mr. Berlow handed you and asked you various questions concerning that, did that brief go into the previous briefs that had been filed in the Wolff, Fine and French cases, in their renegotiation cases? A. No, it did not.

340 Q. Did you feel it necessary to do so in order to prepare the case for Mr. Edell? A. Oh, yes, I did.

Q. And did you do so? A. Yes, sir.

Q. When Mr. Berlow was questioning you as to whether Mrs. Edell had ever filed an income tax return and social security tax return, I believe you said she had paid social security, is that correct? A. That is correct.

Q. And did you characterize that as one of the problems? A. Yes, it was.

Q. How was it a problem? A. Well, at the same time that -- or sometime previous to when we got in the case, Mr. Edell had taken off Mrs. Edell, then Mrs. Edell, as an employee of the partnership and since the original Revenue Agent's Report intended to knock her out, 843 protective claims were filed with the United States Treasury to recoup any income taxes she had paid during the years 1943, '44 and '45, in case of disallowance, her salary was disallowed, by Internal Revenue Service, in other words, he wouldn't be taxed twice. So, at the same time we had to take a deduction on the tax return for an employee, we also filed a refund claim that she was an employee.

341 MR. DICKEY: I would like to offer in evidence Plaintiff's Exhibit No. 38.

THE COURT: Have you seen it, Mr. Berlow?

MR. BERLOW: Yes, Your Honor.

THE COURT: Admitted.

(Plaintiff's Exhibit No. 38 was received in evidence.)

* * * * *

RECROSS EXAMINATION

BY MR. BERLOW:

Q. Mr. Brady, I have in front of me Plaintiff's Exhibit No. 38, and I see the figure \$175,000. Is that what you would call the deficiency proposed by the United States Government? A. By the Internal Revenue Service, yes.

Q. And would you tell me what the amount repaid by Mr. Edell, as a result of renegotiation, was? A. As a result of the renegotiation case, about \$75,000 in principal and about \$35,000 in interest.

Q. About \$110,000? A. \$110,000.

Q. Now, in the determination of the fee, did you reduce the deficiency -- I will withdraw that question. In the preparation of Plaintiff's Exhibit 18, is there a calculation which shows that the deficiency proposed by the United States Government has been reduced by the amount repaid by Mr. Edell to the United States Government as a result of renegotiation? A. Yes, that is the figure there.

342

Q. And would you show me -- now, the deficiency proposed is \$175,000, right? A. The original deficiency proposed.

Q. And the amount repaid as a result of renegotiation was \$110,000? A. Right.

Q. Would you show me on that chart -- let me put it this way: Can you show me on that chart where \$175,000 is reduced by \$110,000? A. Not on that chart, no.

Q. Getting back to Mr. Dickey's questions in reference to Plaintiff's Exhibit 37, Mr. Amann says, let's read the whole paragraph that Mr. Dickey read, again:

"You will understand, of course, that there is no guaranty that the Internal Revenue Department will accept the items of expense which have been allowed by the Department of Justice."

Now, I want to call your attention to the second sentence, particularly:

"In the absence of definitive advices from them, however, there is no other basis on which I can calculate your approximate tax liability."

Now, my question, is do you know now of any other basis upon which at that time the approximate tax liability could have been calculated?

A. Oh, yes.

343 Q. And what was that? A. Well, he could have got \$150,000 for expenses.

Q. Was there any other document or any other proposal, or document or anything, that had originated from the government other than the Prentice proposal, upon which you could approximate the tax liability? I am not talking about pulling a figure out of the air, I am talking about something that existed, upon which you could base the tax liability.

A. Well, you could always base your tax liability on the Revenue Agent's Report.

Q. And that made no allowance for expenses at all? A. That is correct.

Q. That made no allowance for the fact that Mr. Edell had had elaborate correspondence with these factories and had employed somebody to do it, did it, that report? A. That is correct.

Q. It made no allowance for the fact that he had made all of the trips that you have set forth in your Exhibit where you detailed the trips. A. The government doesn't make an allowance, Mr. Berlow, you have got to prove the deductions you have taken on your tax returns, so it can be sustained.

344 Q. But the deficiency proposed was based upon the assumption that Mr. Edell had not expended anything? A. Because he didn't show his books of records.

Q. The answer to my question is yes? A. Yes.

Q. But the Prentice proposal did assume certain expenses?

A. Yes, that is true.

Q. So that the contingency -- now, at any time, let me ask you this question, at any time when these agreements, fee arrangements, with Mr. Edell were drafted and changed and amplified and supplemented, as they were, you recall that taking place, do you not? A. Oh, yes.

Q. There was the first agreement of 138, which was changed?
A. I don't know anything about that first agreement.

Q. But you have seen it in the record here? A. I heard about it, yes.

Q. Then there was an agreement of 183? A. That is correct.

Q. Both of those were signed by Mr. Edell? A. Right.

Q. There was a separate tax agreement signed by Mr. Edell, making three? A. That is correct.

Q. And an agreement on the interest, signed by Mr. Edell?

345

A. That is correct.

Q. And there was an agreement which provided that there be no settlement without his authorization, do you recall that one, signed by Mr. Edell, as to the \$7,500 refund? A. That is correct.

Q. There were five agreements signed by Mr. Edell? A. Four or five.

Q. Then, there has been some testimony as to an original agreement, which may or may not have been destroyed? A. That is correct.

Q. That would make six agreements? A. Five agreements.

Q. With the one that was destroyed, that would be six agreements signed by Mr. Edell. Let's assume five or six, it doesn't make much difference. My question is, though, at anytime, was it explained to Mr. Edell in your presence, that the contingency fee arrangement that he had made insofar as it was applicable to income taxes, that it presupposed that he had earned \$300,000 without spending a nickel? Was anything like that ever said to Mr. Edell in your presence? A. No, there was not.

* * * * *

346

REDIRECT EXAMINATION

BY MR. DICKEY:

Q. Mr. Brady, Mr. Berlow asked you if that chart, if you had shown on the chart which is Plaintiff's Exhibit 18, if you have shown any place on that chart the deduction of the \$110,000 ultimate cash payment on the renegotiation case from the \$175,000 tax deficiency. Your answer was no. Would you deduct the \$110,000 renegotiation fee from the tax deficiency? A. Oh, no.

Q. Why not? A. You would take out the excessive profits for the year as determined by the court, which were \$26,000 for the year 1943, \$54,000 for the year 1944, and \$70,000 for the year 1945. When the excessive profits were taken out of the individual's income tax, you then would recompute the tax with the excessive profits taken out. The amount paid to the Renegotiation Board had nothing to do with the re-computation of the individual's income tax.

Q. The Plaintiff's Exhibit No. 6, which is the letter agreement of July 28, 1954, regarding income taxes, does that state the method of calculation of the fee for the income tax case? A. Yes, it does.

347 Q. What is it based on? A. It is based upon the original Revenue Agent's Report which was \$175,000 deficiency.

Q. No, I mean in the letter itself, does it state it is based on the tax deficiency? A. Yes, it does.

Q. And where was that tax deficiency first asserted? A. In the Revenue Agent's Report.

Q. And in what amount was that? A. \$175,000.

* * * * *

MR. DICKEY: At this time, Your Honor, we would withdraw the large charts except for purposes of showing them during the course of trial and substitute therefor the typewritten copies which I think have been prepared, have they not, Mr. Berlow?

* * * * *

348 THE COURT: Very well. Then, these are received in lieu of the large exhibits placed on the blackboard, as nos. 17, 18 and 28?

* * * * *

THE CLERK: "Attorney's Fees for Reduction Of Income Taxes" is marked as Plaintiff's Exhibit No. 18A and received. Plaintiff's Exhibit 18 is withdrawn.

(Plaintiff's Exhibit No. 18 was withdrawn; Plaintiff's Exhibit No. 18A was substituted therefor and received in evidence.)

* * * * *

THE CLERK: "Computation of Attorney's Fees For Reduction of U. S. Government's Excessive Profits Claim" is marked as Plaintiff's Exhibit 17A and received. Plaintiff's Exhibit 17 is withdrawn.

(Plaintiff's Exhibit No. 17 was withdrawn; Plaintiff's Exhibit No. 17A was substituted therefor and received in evidence.)

* * * * *

349 THE CLERK: A copy thereof is marked as Plaintiff's Exhibit 28A and received. Plaintiff's Exhibit 28 is withdrawn.

(Plaintiff's Exhibit No. 28 was withdrawn; Plaintiff's Exhibit No. 28A was substituted therefor and received in evidence.)

* * * * *

EDWARD J. BRADY

resumed the stand and testified further as follows:

RECROSS EXAMINATION

* * * * *

BY MR. BERLOW:

Q. Referring to Plaintiff's 18A, Mr. Brady, the first column, that represents, does it not, a reduction of the taxable income by the amount repaid in renegotiation, is that right. A. No. It is the recomputation of the individual's tax after taking out of income, for the year

1943, the excessive profits of \$26,000, as determined by the Tax Court, \$54,000 for the year 1944, as determined by the Tax Court, and \$70,000 for the year 1945, as determined by the Tax Court.

350 Q. Well, you reduced the income, upon which the original deficiency was based, by the amount repaid in renegotiation? A. No, it is not. It is done by taking out of income for the year 1943, the excessive profits of \$26,000 determined by the Tax Court, the excessive profits of \$54,000 in 1944 as determined by the Tax Court, and excessive profits of \$70,000 for the year 1945 as determined by the Tax Court.

Q. You say taking out? A. Of income, yes.

Q. And when you take it out, you reduce the income by the amount that is taken out, is that right? A. That is correct.

Q. So another way to say it is, you reduce the income by the amount repaid -- A. No, it is not.

Q. Well, then, if it isn't -- you didn't reduce the deficiency proposed, you did not do that? A. The original deficiency proposed by the Revenue Agent's Report was \$175,000. After reducing the taxpayer's income by \$26,000 in the year 1943, \$54,000 in the year 1944, and \$70,000 in 1945, Mr. Korr of the Internal Revenue Service issued a revised Revenue Agent's Report showing a deficiency of \$124,611.42.

351 Q. You recall just saying that you reduced the taxpayer's income? A. I said you take out of income.

Q. You just said, would the reporter read back the answer, I would appreciate it.

THE COURT: Just a minute. Wouldn't it be correct to say that this excessive amount, allegedly claimed in these renegotiation proceedings, was something that Mr. Edell had to pay back, wasn't it?

THE WITNESS: Yes, but he took a tax credit for it, too, Your Honor.

THE COURT: Yes. Well, then, after he got through doing that, it was no longer, since it was not income to him, these excessive profits and he had to pay them back, so to speak, then that was eliminated from the claimed amount of the income tax, was it not?

THE WITNESS: Correct.

THE COURT: And that is why you say that from \$175,000, there was taken these various amounts of \$16,000 -- so as to reduce it to \$16,406.52, and then \$32,000 in the year 1944 and \$75,000 and some odd dollars and cents in 1945. Isn't that what you are saying?

THE WITNESS: Yes, Your Honor.

THE COURT: All right. Now, go ahead, Mr. Berlow.

BY MR. BERLOW:

352 Q. But you didn't reduce the \$175,000 by the amount he repaid, did you? A. No. You are mixing apples and oranges.

Q. You reduced the taxpayer's income by the amount repaid?
A. You take out of income the amount determined as excessive profits, for the years involved, by the Tax Court of the United States.

Q. You did not take it out of the deficiency proposed, did you?
A. No, we did not.

MR. BERLOW: I have no further questions.

MR. DICKEY: Again, we rest, Your Honor.

THE COURT: All right. You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

MR. BERLOW: I would like to make a motion for a directed verdict at this time.

THE COURT: Very well, I will deny your motion.

* * * * *

HARRY EDELL

the defendant, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BERLOW:

353 Q. Would you state your full name? A. Harry Edell.

Q. Where do you live? A. 5601 River Road, N. W., Washington, D. C.

Q. How are you employed at the present time? A. I am award consultant for overseas projects.

Q. What does that work involve? A. Well, it involves negotiating projects in the under-developed countries and bringing to them the necessary equipment for the drilling of water wells so that they can produce food in a hurry.

Q. Now, going back to the years 1943, 1944 and 1945, how were you employed at that time? A. At that time, I organized a company with my brother for the purpose of research and development of peacetime factories into war work. Our method of procedure was to reorganize these factories in every detail from the things that they were manufacturing to the things that the government wanted in the war effort.

Q. Could you give us just one example, very briefly, a concrete example of what you did with one factory in one particular instance?

A. Well, in the case of Wiley-Bickford-Sweet, which was probably the largest one, they had been manufacturers of very cheap carpet slippers for almost a century in Worcester, Massachusetts. They had

354 attempted to do this war work and they had lost a considerable amount of money on their first project. They sought me out through a brother-in-law of Brewer and Company in the same city and I conferred with them and I asked for an analysis of all their machinery and equipment. With this analysis, I went to the proper sources in the War Development Board which were known as the Machinery and Development Section and discussed this type of machinery with these men, in order to ascertain what kind of things could be done for Wiley-Bickford-Sweet so that they could get into this war work. If they didn't get into the war work, they would have been out of business because it required priorities to get any kind of materials to exist.

With that information, I then traveled throughout the United States, in various government agencies, in the research departments, seeking out the kind of things that would be comparable to the machinery that Wiley-Bickford-Sweet owned and the type of labor which they had

at that period and in the course of doing this research and development, we would ascertain what they could do. In many instances, we acted as, as I might use the term, guinea pigs for these research departments in expending a great deal of time and money in trying to build something for them that hadn't even been established.

Q. Now, did Wiley-Bickford-Sweet, were they converted from carpet slippers to a war effort? A. They were converted from carpet
355 slippers to such items as life preservers, ponchos, sleeping bags, and in one instance the great Knutson vest, which was being prepared secretly for the purpose of the fliers that flew over the Pacific on the anticipated attack in the islands over there.

Q. Did you have an arrangement with Wiley-Bickford-Sweet as to your compensation? A. I did.

Q. Briefly, what type of arrangement was that? A. The type of arrangement we had was a service fee and this service fee was based on the amount of finished material that the United States Government Agencies accepted from them. In many instances, there were times when they had contemplated returns and those items were deducted.

Q. Were you paid by these various companies from time to time for the work that you did? A. I was. As a matter of fact, they were the bookkeepers for us.

Q. In other words, the amount of your fee was determined by their records? A. Exactly.

Q. And they remitted payment to you, based upon the amount of the contracts that had been obtained? A. That is correct. May I add that in many instances, when there was a repeat type of requirement from the government, such as life preservers in the Navy Department in Philadelphia, where we had originally taken a contract for, say, 100,000 of these and then they wanted 50,000 more, these contracts were all competitive by law, there had to be a minimum of three bids unless there was an extreme urgency, which was very rare in any of our factories at all. In those instances, I forewent any service fee at all

in order that the labor, the stream of labor would continue, in as much as they had already developed out the bugs in the original thing and it was much simpler for us to continue.

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BY MR. BERLOW:

Q. Now, prior to 1943, had you filed income tax returns?

A. I did.

Q. Had you filed income tax returns -- do you recall for how long a period prior to 1943 you had in fact filed income tax returns?

A. I filed every year when I had income.

Q. Prior to the year 1943 or prior to the year involving your tax for 1943, had it ever been brought to your attention that your payment of tax was deficient in any way? A. No, sir.

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Q. Had any communication to that effect ever been sent to you by the Internal Revenue Service for the Department of Justice?

A. Not to my knowledge.

Q. Prior to 1943, would you just briefly again tell us who -- tell us, first, who prepared your income tax returns, what was his name? A. You are asking prior to 1930 --

Q. 1943. A. 1943, prior to that?

Q. Yes. A. Well, there was a gentleman in New York at that time by the name of A. M. Rosenthal. He was a CPA.

Q. And had he prepared your income tax return? A. He did.

Q. And had you provided him with information in that regard?

A. That is correct.

Q. And did there come a time when someone else prepared your income tax return? A. Yes, sir.

Q. What was his name? A. Louis Appel.

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Q. And what was the first return that he filed for you?

A. The first return he filed for me was 1942.

Q. And what were the returns he filed subsequent to that?

A. 1943, '44 and '45.

Q. And then what happened in 1946? A. Mr. Louis Appel became very ill and had to go to Florida. He had a heart attack.

Q. And who prepared your returns for the following year?

A. Mr. Payson, who was a member of the firm of Appel and Brock. The Mr. Appel in this company just mentioned was a brother of Louis Appel and Mr. Payson worked for that firm and it was in the same identical office.

Q. Were your returns filed for 1943, '44 and '45. A. They were.

Q. And did you deliver certain information to Mr. Appel in this regard? A. I did.

Q. And he prepared the returns based upon this information?

A. He did.

Q. Can you tell us generally what the information was that you delivered to him? A. I delivered to him the railroad, airline, hotel, incidental expenses in voucher forms, plus an analysis of these items.

Q. That is in regard to expenses. Did you deliver to him a list of your income? A. Yes, sir. He received the entire list of each check that was sent to me at the end of a month with the statement that the factory always accompanied the check.

359 Q. He retained all these records? A. He did.

Q. Did you maintain an office at all during this period of time?

A. At 66 Rector Street, New York City.

Q. And did you have any employees? A. Mrs. Edell, Mina Edell.

Q. Was she paid a salary? A. She was.

Q. And was there correspondence connected with the preparation of documents connected with this work? A. Yes, sir.

Q. Was it, would you say, voluminous or minor or what?

A. It was a voluminous amount of correspondence.

Q. Were there forms to be filled out for the government?

A. The forms, the actual forms that were to be filled out for the government were always filled out in the factories by the controllers of the factories, themselves.

Q. And you corresponded with the factories, that was the principal bulk of your correspondence, is that right? A. Occasionally, I would correspond with the heads of the research departments in the various government agencies in relation to things that we were researching for them.

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Q. And did Mrs. Edell handle all this correspondence? A. She handled, I would say, about 80% of it. Frequently, I would have to have things typed when I was out of town and I would go to the secretaries in the various hotels and have it done.

Q. And you would pay them for that? A. I would pay them for that.

Q. Now, when these returns were prepared by Mr. Appel, would he deliver the completed return to you? A. He did.

Q. And you executed it? A. I did.

Q. Do you recall how much it was that you did in fact pay in income tax during these three years? A. I cannot tell you that, Mr. Berlow. I don't really remember.

Q. Did there come a time when it was brought to your attention that the United States Government was raising some question as to your tax indebtedness to it? A. Yes, there was.

Q. Would you tell us approximately when that was? A. I believe it was in the year 1948.

Q. And how was that brought to your attention? A. I received a notice from the Renegotiation Board to fill out a tremendous amount of forms and in as much as I did not have the time nor the patience nor the knowledge with which to do it, I sought out Mr. Appel and asked him whether he could do it and he wasn't available because he was in Florida. So I just neglected doing it, that is about all, because I was on the road all the time.

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Q. Did there come a time when you did fill out that form? A. Yes, there was.

Q. And did you obtain any assistance in doing that? A. I went to

the various factories and had the controllers try to fill in the figures that pertained to their particular factories.

Q. Did there come a time when you hired some professional person, an accountant or an attorney to assist you in this matter?

A. Well, I asked Oppenheim Appel, who succeeded Louis Appel, if they would attempt to go into the renegotiation matter and they said they had no experience in that direction at all.

Q. Did you hire somebody else? A. The first man I hired was Pittman & Roberts in Washington, D. C.

Q. And when was it that you retained them? A. I believe that was sometime about 1948, the latter part of it.

362 Q. Now, about the same time, were you advised that your income tax payments were also questioned? A. Yes.

Q. And did you retain somebody to handle that, as well?
A. Pittman & Roberts were the ones who handled both things.

Q. And from that time on, were both of these matters handled by the same firm? A. Yes, sir.

* * * * *

BY MR. BERLOW:

Q. Now, was there a person, a man in the law firm of Pittman & Roberts who worked on this matter for you? A. Yes, sir.

Q. What was his name? A. His name was Mr. Roberts.

Q. And for how long a time did he work on this matter?
A. He worked on this matter for about eighteen months to two years.

363 Q. And then his employment was terminated. What resulted in his stopping work on it? A. He just died.

Q. And did someone else then -- A. Mr. Pittman then assigned a Col. Taylor, who was in the office, to do the same work and pick up from that point.

Q. And did Mr. Taylor do some work on this matter? A. Yes, sir.

Q. And how long a period of time did he work? A. I would say for about a year, a year and a half.

Q. And then what caused his stopping to do work? A. He resigned from the firm of Pittman and Roberts and went to live in Hawaii.

Q. And did Pittman & Roberts turn it over to still another person? A. No, they didn't. They just went out of business, Mr. Pittman associated himself with the Washington office of a New York firm.

Q. Did you suggest that Mr. Pittman continue with this matter? A. No, I did not.

Q. Did you, other than Messrs. Taylor and Roberts, did any accountant do any work on this matter? A. Yes, there was a Stovall and Company that Mr. Pittman had retained. They were in his building and he wanted them to prepare all the necessary figures that Mr. Pittman thought would be necessary for this renegotiation and tax case. I paid the bills for Mr. Stovall and Company.

364 Q. You say you paid the bills? A. I did.

Q. And did you see the work that they had prepared? A. I saw only a part of it.

Q. What did that consist of, I am talking about the Stovall work. A. Yes, I understand. They had large charts and they had broken down from my check books and from the diary which I kept of trips and so forth, all the possible figures that they could assemble to substantiate the expenses which we were going to claim.

Q. Now, had something happened to the records that you had delivered to Mr. Appel? A. Well, when Mr. Appel died, I was told by Mr. Payson that all the records of about twenty-odd clients had disappeared, that they couldn't establish them.

Q. And were your records amongst those? A. They were.

Q. And then was it necessary for you, in conjunction with the Stovall people, to reconstruct these records that had been delivered to Mr. Appel? A. That is correct.

365 Q. And what did you use to do this? A. Check books that I had and cancelled vouchers and this diary I referred to, and correspondence which indicated where I had been on particular dates.

Q. Well, had you done a substantial amount of traveling during this period of time? A. As a matter of fact, outside of Christmas, we worked every single solitary day in the year.

Q. And my question was, did you have to travel when you worked? A. We certainly did, we traveled all over the United States.

Q. And what were the places you went to? A. Well, we went to places like Rock Island, Illinois, Dayton, Ohio, the Boston Quartermaster, the Brooklyn Quartermaster, the Philadelphia Quartermaster, the Washington Quartermaster, where there were not only one agency but half a dozen agencies. There was one in Cincinnati, Ohio, we were constantly going to these research and development departments to seek out the things that fitted into these various factories.

Q. Did you go to the factories, too? A. Then we went from there to the factories.

Q. How many factories were there? A. Well, at one time there were as many as ten and it boiled down to eight.

366 Q. Were they all located in different cities, generally? A. Well, there was one in Long Island City, there were two in New York City, there were two in Worcester, Massachusetts, at one time there were three in Providence, Rhode Island; that is about the story on them.

Q. Now, after Mr. Pittman ceased working on the case, did you retain some other attorneys to assist you? A. I did.

Q. Who were they? A. Lowenstein, Pitcher, Amann & Parr of New York City.

Q. And who was the man in that firm who undertook to work on this matter for you? A. Mr. Douglas Amann.

Q. And did you see any of the work which had been accomplished by Pittman & Roberts, what had they done, as you recall it? A. Well, I saw all the work that I mentioned to you a few seconds ago.

Q. Had they filed a petition, do you recall that? A. Yes, they had.

Q. And then did you discuss this matter in detail with Mr. Amann? A. I did.

Q. And did he proceed to do some work in this matter?

A. He did.

367 Q. Prior to your going to Mr. Amann, had you from time to time received bills from Pittman & Roberts? A. I did.

Q. And do you recall how much the charge was that they made in connection with this matter? A. The sum total was in the neighborhood of between \$6,000 and \$6,500.

Q. Did you pay that bill? A. I did.

Q. Was there any litigation in connection with that bill?

A. None whatsoever.

Q. Did Stovall make a charge? A. He did.

Q. How much was that charge? A. A little over \$2,000.

Q. Was that paid? A. That was paid.

Q. Was there some discussion as to these bills between you and the Stovall firm? A. There was.

Q. What was the nature of that discussion? A. I was very perturbed at the length of time he was using to get together these figures. He was being paid at the rate of ten dollars an hour and he had already used up two hundred hours to establish a set of figures, and in one instance when I arrived in his office, the charts were on his desk and he and two other men were in the next office playing gin rummy and
368 I was being charged at the rate of ten dollars an hour and I objected to it strenuously.

Q. And what was the date that you retained Mr. Amann, the best you can recall? A. Well, I just can't -- I will have to refer to the --

Q. Well, how long a time, do you recall, had Pittman & Roberts been working on this matter? A. They worked on it from about 1948 to 1950 -- well, I would say 1951, I guess, something like that.

Q. Had it been brought to your attention anytime that Pittman & Roberts were negotiating settlement of this matter or attempting to settle this matter with the United States Government? A. Yes.

Q. Who brought that to your attention? A. Col. Taylor.

Q. What was said in that regard? A. Well, he told me that he had discussed this with the Justice Department and that he could secure this particular allowance for expenses, but they hadn't as yet arrived at a fee for services rendered.

Q. Did he advise you what the allowance for expenses was?

A. Yes, he told me that there would be approximately \$25,000 each, for each year 1943, 1944 and 1945.

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Q. As being your expenses in this? A. That is correct.

Q. Did he distinguish between that expenses being allowed on renegotiation and income tax? A. No, not at that time, he didn't.

THE COURT: This is the firm that had all of these records?

THE WITNESS: They had the original records.

BY MR. BERLOW:

Q. They were handling both the income tax matter and the renegotiation matter? A. Yes, it also included the renegotiation case.

Q. When you went to Mr. Amann, were the documents that had been prepared by Pittman & Roberts delivered to him? A. Yes, they were delivered to Douglas Amann, but previous to their being delivered, I brought Mr. Amann into Pittman & Roberts' office and introduced him to Mr. Pittman.

Q. Did they discuss the matter? A. They discussed the matter.

Q. And did Mr. Amann have the opportunity to obtain any information you requested? A. He did.

Q. From Pittman & Roberts? A. He did.

370 Q. Now, after Mr. Amann began to work on the matter, did you consult with him from time to time? A. I did.

Q. Did you provide him with any information in addition to that which Pittman & Roberts had? A. From time to time, when I could locate something, I did give it to him.

Q. Now, what was it, so far as you knew, that Mr. Amann did in this case? A. Well, Mr. Amann was a very meticulous lawyer, he went through the records with a fine comb and he negotiated, in summarizing in answering your question, he negotiated a deal with Mr. Prentice of the Justice Department in relation to expenses and he, in turn, also said we had not yet arrived at a conclusion as to services rendered. At the same time, he also made an exhaustive study of the Renegotiation Act as it applied to our partnership. That service cost me \$3,000.

Q. How do you know that? A. Because I received a bill for \$3,000 for that service rendered, independent of any other services.

Q. Was that bill paid? A. That bill was paid.

Q. Now, after Pittman & Roberts left, the Stovall firm had nothing further to do with the matter, either? A. Nothing at all.

Q. Did some other accountants come in to work with Mr. Amann?

371 A. No, they did most of the accountancy work themselves there, with the exception of seeking current annual information from Oppenheim Appel, and so forth.

Q. Did there come a time when Mr. Amann advised you that a settlement proposal had been received from the United States Government? A. Yes, sir.

Q. Would you tell us what he told you in that regard? A. He told me that Mr. Prentice had agreed to allow approximately \$64,000 for expenses, but up to that time we hadn't as yet arrived at any service fee.

Q. Now, was it brought to your attention by Mr. Amann at any time that the Federal Bureau of Investigation was looking into this matter? A. He did.

Q. And would you tell us approximately when it was that he told you that? A. Well, that was just about the time when he was negotiating with Mr. Prentice.

Q. And did he tell you about the settlement offer after their investigation? A. He did.

Q. And did you, yourself, have anything to do with this investigation by the FBI? A. Nothing whatsoever.

372 Q. Did you provide them with any information that they requested? A. They spent three days in Mr. Amann's office, going through everything he had, and I told Mr. Amann to give them carte blanche to do it.

Q. Were you requested, while they were in Mr. Amann's office for three days, were you requested by the FBI in the office of Mr. Amann to provide the FBI with additional information other than that in the office? A. No, sir.

Q. Did they make any inquiry as to the transfer of securities or dividends to your sister, Mrs. Nass? A. I understood that there was an inquiry in Philadelphia regarding that and that Mrs. Nass gave the man all the information that he requested.

Q. Did you tell her to do so? A. Yes, of course.

Q. Did you provide them with information in that respect?
A. I didn't provide them with anything because Mr. Amann had all the information.

Q. And was that matter of the transfer of the securities brought to your attention after the FBI looked into it? A. Well, I was told by Mr. Amann that after they had been given all the facts, they just accepted it as such and I never heard from it further.

373 Q. And was it the expense items that the FBI was looking at, this expense information that you delivered to these attorneys?

A. I presume they were looking at every detail that had reference to my work.

Q. Now, when the offer of settlement was brought to your attention by Mr. Amann, did you discuss it with him in some detail?

A. Yes, I wanted to know what he thought about going to court on the renegotiation case first and he thought that in as much as their office had come up with the feeling that I was not subject to renegotiation, that it would be a good idea to try the renegotiation case and if we succeeded in that, that would close out everything with the exception of the tax; but if they did not succeed in doing it, they could always revert back to Mr. Prentice's proposal and take it up from that point.

Q. Did there come a time when you became dissatisfied with this Lowenstein firm or Mr. Amann or both of them? A. I was never dissatisfied with Mr. Amann.

Q. Did there come a time when you were dissatisfied with the firm? A. I was dissatisfied with Mr. Amann's senior partner.

Q. And did there come a time when you determined that you would sever your relationship with the firm? A. I did and for the
374 reason that after a period of about four years or so and they being on a daily basis, there never seemed to be any end to this thing, there was no daylight showing. That is when I decided I had enough.

Q. Now, at that time, when you decided you had enough, had you received any written communications from Mr. Amann in regard to the settlement proposal of Mr. Prentice? A. I did.

Q. Now, I show you this letter dated February 1, 1954 -- and I will first ask the clerk to mark it as Defendant's Exhibit No. 1.

THE CLERK: Defendant's Exhibit No. 1 marked for identification.

(Letter dated February 1, 1954, to Mr. Edell from Mr. Amann, with seven pages of computations, was marked Defendant's Exhibit No. 1 for identification.)

BY MR. BERLOW:

Q. I show you Defendant's Exhibit No. 1 for identification and I ask you if that is a letter, with various attached computations, which you received from Mr. Amann of the Lowenstein firm, about that date, which is February 1, 1954. A. It is.

Q. Now, I show you Plaintiff's Exhibit No. 3, and ask you if that is the same and if there are some items missing from it, I wish you would tell me. Is the letter which appears on the surface, the same?
A. Yes, sir.

375 Q. Is the next page the same or different? A. The next page seems to be different.

Q. There is added to that this one page, is that right?
A. That is right.

Q. Other than this page, the first page, are the rest of the pages the same? A. They are.

Q. So the second page in Defendant's Exhibit No. 1 for identification is the only difference between it and Plaintiff's Exhibit No. 3? A. It is.

Q. Now, thereafter, I show you Plaintiff's Exhibit No. 37, which is a letter dated March 8, and ask you if that is another letter which you received from Mr. Amann in reference to this matter? A. It is.

Q. Now, before or after you received those letters, did you have any discussion with Mr. Amann in reference to their contents? A. I did.

Q. Would you tell us what it was? A. Well, Mr. Amann at my request got up these particular figures that I wanted to know, because I was interested in the net results of what I could get -- what I had to
376 pay the Renegotiation Board and also the tax department, and at my request, he did that and mailed them to me.

Q. Now, first, which was the one which he mailed to you first, which did that have reference to? A. February 1, 1954, to the Mayflower Hotel in Washington, D.C., and that referred to the total renegotiation cost.

Q. Did he advise you as to what the total renegotiation cost would be? A. He says here \$137,526.60.

Q. Did you, after you received that letter, refer to that figure in a round way at any time? A. For a matter of convenience, we always discussed it as \$138,000.

Q. By "we," do you mean Mr. Amann -- A. Mr. Amann and myself.

Q. Did you and Mr. Brady and Mr. Casey discuss it in the round figure? A. We always discussed that figure as \$138,000 and no other figure.

Q. Did there come a time thereafter when Mr. Amann -- in his first letter which you referred to as renegotiation, he did say he would send you the tax calculation at some later time, do you see that in there, in the first paragraph? A. Yes, sir, I do.

377 Q. Would you read that?

THE COURT: What is that Exhibit No., please.

MR. BERLOW: Defendant's Exhibit No. 1 for identification.

I am asking Mr. Edell to read the second sentence.

THE WITNESS: (Reading) "I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week."

BY MR. BERLOW:

Q. Did there come a time when you did receive the tax figures?

A. There was.

Q. And did you write another letter to Mr. Amann and ask him for them? A. I contacted him about ten days after this, in order to expedite it.

Q. Did he send you the letter in which he told you what the tax figures were? A. He did.

Q. And what were those figures? A. 1943, \$10,380.65; 1944, \$14,823.86; and 1945, \$15,960.32.

Q. What does it total up to, roughly? A. Approximately \$40,000.

Q. Did you understand what that dollar figure represented?
A. I did.

378 Q. That was explained to you? A. It was.

Q. By whom? A. By Mr. Amann.

Q. What does it represent? A. It represents the estimated tax liability that I would have to pay the tax department.

Q. Based upon what? A. Based upon Mr. Amann's analysis of the renegotiation settlement with Mr. Prentice.

Q. And did there come a time when you determined that you no longer wanted Mr. Amann to represent you, I think we went into that already. Did you then, after you made that determination, make some effort to get another lawyer? A. I wasn't really seeking another lawyer, I had enough lawyers.

Q. Well, did you discuss this matter with another lawyer?

A. No, sir, not with another lawyer. I discussed it with a friend of mine by the name of William J. McCormick.

* * * * *

379 Q. I don't want any conversation with Mr. McCormick, but after you spoke to Mr. McCormick, did you then have conversation with some lawyer who you understood was associated with Mr. William J. Casey, the plaintiff in this case? A. Well, I met Mr. Dickey.

Q. And did you have a conversation with Mr. Dickey in reference to this? A. I did.

Q. Would you tell us what was said? A. Mr. McCormick was in the same room with us, in Mr. Dickey's office, and Mr. McCormick had told Mr. Dickey in front of me that my friend, Mr. Edell, was invited up here by me to discuss this thing with you and he is under no obligations with you and you are under no obligations with him. He has a tax problem and a renegotiation problem, and Mr. Dickey was kind enough to sit down and talk with us about it.

Q. Did Mr. Dickey undertake to represent you in that matter? A. No, Mr. Dickey said he could not represent me because it might be a conflict of interest in as much as he was doing work for the United States Government at the time, but -- I beg your pardon.

380 Q. Did he refer you to another lawyer? A. -- but he said there was a friend of his who was a tax expert, that he had a great deal of confidence in, that could handle the case, at least he would like to discuss it with him.

Q. Did he give you the name of this friend? A. He did.

Q. What was his name? A. Mr. William J. Casey.

Q. And did there come a time when you went and made arrangements to talk to Mr. Casey? A. Well, Mr. Dickey made the arrangements to bring Mr. Casey to Washington and we discussed the matter first in Mr. Dickey's office.

Q. You, Casey and Dickey? A. That is correct.

Q. Would you tell us what took place in the course of that -- first, tell us when the discussion was? A. Well, the discussion was about the early part of 1954.

Q. Would that be January or February of 1954? A. Sometime in that area.

Q. And it took place in Mr. Dickey's office and Mr. Casey and Mr. Dickey were present. Now, tell us what was said by the three people who were there. A. Well, Mr. Dickey introduced me, he didn't have very much to say after that. I told Mr. Casey that I was not interested in another lawyer per se, that because of the circumstances, I was interested in getting this case closed as quickly

381 as possible in as much as my work took me overseas and I had to get busy and go to California to negotiate projects with joint venturers and then go abroad for the purpose of negotiating them.

Q. What was the nature of the work you were doing at that time?

A. At that time --

Q. Who were you working for, were you working for yourself?

A. Yes, I was working for myself.

Q. Were you associated with any company? A. Yes.

Q. What was the company? A. Johnson International of Los Angeles, California.

Q. What was the nature of the work that they did? A. Well, they had, there was a very large pump company associated with them, that was the type of pump used for irrigation purposes in the desert areas of the United States or the world.

Q. Now, did Mr. Casey respond to your statement that you have just given us? A. He said he would be glad to discuss it with me.

Q. Was anything further said at that time? A. Yes, he said when do you expect to be in New York, and I told him such and such a time, and he said give me a buzz and we will set up a meeting in my

382 office there, and that I proceeded to do.

Q. When was it that you called him and met him in his office?

A. That was about the early part of 1954.

Q. And what discussion took place there? A. Well, I told Mr. Casey then, just as I told him in Mr. Dickey's office, that I was thoroughly satisfied with Mr. Douglas Amann's work, he was an excellent lawyer and a perfect gentleman, but that the case had been in their office so long and that I had already spent close to \$15,000 in that office, that I simply had to get this case finished and that if he was prepared to handle this case individually and do all the leg work and get it done, I would be interested in discussing a fee with him.

Q. And did he indicate what type of fee arrangement --

A. Not at that time.

Q. Was that all that was said in his office at that time?

A. Approximately that.

Q. Did there come a time when Mr. Amann and Mr. Casey met in this case? A. Yes, there was.

Q. When was that? A. Oh, I would say that was sometime around, oh, possibly March or April of 1954.

383 Q. Now, you testified as to two meetings with Mr. Casey.

Before Mr. Casey and Mr. Amann met, did you have any other meetings with Mr. Casey? A. Yes, Mr. Casey set up another meeting with me for a Saturday and he asked me if I would come to his home in Long Island to have lunch with him and we could spend the day talking about it at his home, and in as much as it was Saturday, he didn't feel like coming into town. I said I would be glad to do it. So I proceeded to his home in Long Island, where we spent a very nice afternoon.

Q. Did you discuss this case? A. In detail.

Q. What was it that you told him, did you make any reference to any matters that had transpired between you and Mr. Amann, what was it that you told him? A. I told Mr. Casey that there was a complete analysis of the renegotiation case in existence. I also told him that the Justice Department had made an offer to Mr. Prentice --

the Justice Department had made an offer to Mr. Amann for expenses of approximately \$64,000, that they had not arrived as yet upon services rendered, and that we were contemplating trying the renegotiation case in the court.

Q. Did there come a time when you delivered to Mr. Casey these two documents that you have before you, which have been marked as Plaintiff's Exhibit 37 and Defendant's Exhibit No. 1? A. Yes,

384 there was.

Q. Would you tell us when that was? A. I delivered those two to Mr. Casey in his office in New York City.

Q. The question was, when? A. I would say on or about, oh, May of 1954.

Q. And did Mr. Casey read those documents? A. He did.

Q. Did he read them in your presence? A. He did.

Q. Did you discuss them with him? A. I did.

Q. Tell us what the discussion was with reference to those documents? A. Well, I told Mr. Casey, I pointed out to him the important facts as far as I was concerned and that was the total renegotiation cost as evaluated by Douglas Amann's office and which included the expense amount that Mr. Prentice was willing to concede, the net cost was \$137,526.60, and that as far as the tax was concerned, that according to Mr. Amann's evaluation of the contemplated tax, based on this renegotiation, that was approximately \$40,000.

Q. And did Mr. Casey make any observation about that? A. No.

Q. Did you, after that meeting in May, did you then meet with Mr. Amann and Mr. Casey at sometime? A. I did, -- they did.

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Q. When did they meet together? A. I telephoned Mr. Amann and I said, Doug, I want to introduce Mr. Casey to you, who I think knows his way around Washington and I would like very much if you two would get together and you are under no obligations, it will not affect your case in one way or another, but I would like you two fellows to meet because I think that Mr. Casey can be of service to us.

Q. And did Mr. Amann agree to that? A. He did.

Q. And did you, Mr. Amann and Mr. Casey meet at someplace?

A. That first time, I did not meet with them, Mr. Casey went downtown and met with Mr. Amann in his office.

Q. And was that after Mr. Casey had examined Defendant's Exhibit No. 1 and Plaintiff's Exhibit No. 37? A. That is correct.

Q. And thereafter, did you and Casey and Amann all meet together in someplace? A. Yes, they both were going to be in Washington on a certain day and I invited them to have lunch with me at the Mayflower Hotel and the three of us met there and we had lunch and discussed the case.

386 Q. Were those documents, I just mentioned, discussed at that time? A. The figures were.

Q. And did Mr. Casey say anything about those figures?

A. Nothing beyond the fact that he knew they were in existence.

Q. And was the discussion between Mr. Casey -- was it a friendly discussion? A. Oh, very much so.

Q. Did there come a time when you advised Mr. Amann and his firm that you no longer wished them to represent you?

A. There was.

Q. And when was that? A. That was on or about the latter part of June, or the first part of July, it is right in that immediate area, 1954.

Q. Was there some question as to the amount of money which you owed the firm? A. Mr. Amann wrote me a letter telling me that there was a balance due of \$1,855 and some odd cents and if I would send him a check for that amount, he would send all the papers up to Mr. William J. Casey's office.

Q. Did you send the check to Mr. Amann? A. I did, immediately.

Q. And were the documents delivered? A. They were.

387 Q. And did you see this receipt, this three page receipt, was it brought to your attention that Mr. Casey had executed a receipt for all these documents? A. I know there was a receipt for them and Mr. Casey received all the papers.

Q. And after Mr. Casey received all the papers, did you discuss the matter with him again? A. Discuss the papers with Mr. Casey?

Q. Yes, did he indicate to you there was anything unsatisfactory or deficient about them? A. No.

Q. Now, after you made this payment to Mr. Amann, did you receive any further demands of payment from him? A. Yes, there was another demand for some incidental expenses.

Q. Did you pay that? A. I paid that.

Q. After that was paid, did you receive any demands for payment from Mr. Amann? A. None whatsoever.

Q. Have you received any to this day? A. None whatsoever.

Q. And to this day, you have received no further demands for payment from Pittman & Roberts or the Stovall Company, either?
A. None whatsoever.

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BY MR. BERLOW:

Q. Did there come a time, Mr. Edell, when you entered into certain discussions with Mr. Casey as to his compensation? A. There was.

Q. And do you recall when it was that that was discussed for the first time? A. I think the first time we discussed it was at his home out on Long Island.

Q. What was said in reference to the payment at that time? A. I told Mr. Casey that I wanted to -- if I made an agreement with Mr. Casey, it would have to be on a contingency basis because I was all fed up on the type of bills I had been getting for the previous seven years.

Q. And did you state at that time what the basis of the contingency was to be? A. Not at that time.

Q. Did there come a time after that when you did discuss it? A. There was.

Q. Did you state then what the basis was? A. There was and it was in his office.

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Q. What was said at that time? A. We had discussed the entire matter by this time, we had both known exactly what we were thinking about. And I told Mr. Casey that I would give him 30% of any savings that he could establish in the renegotiation and tax cases based upon the \$138,000 renegotiation settlement that had been arrived at with the Justice Department and the 40-odd thousand dollar tax figure that had been established by Mr. Douglas Amann, plus the fact that I would give him \$2,500 as a retainer, which would be subtracted from any future moneys that he would receive in the effort to secure additional savings.

Q. And did he agree to that? A. He agreed to that.

Q. Were there any changes or any discussions in reference to that fee arrangement? A. Mr. Casey said he would draw up an agreement to that effect.

THE COURT: At this time, we will take the recess for the luncheon period. The recess will be until 1:45.

(The luncheon recess was taken from 12:30 to 1:45 p.m.)

* * * * *

390

BY MR. BERLOW:

Q. Mr. Edell, when we adjourned for lunch, I had asked you about a discussion that you had with Mr. Casey in reference to the fee arrangement. Now, did there come a time when the fee arrangement which you discussed with Mr. Casey was reduced to writing? A. Yes, sir.

Q. And where did that occur? A. In his office.

Q. Would you tell us when that was? A. July 15, 1954.

Q. And who prepared that fee agreement? A. Mr. Casey.

Q. Were you represented by any other counsel at that time?

A. No, sir.

Q. Did you read the agreement at that time? A. I did.

Q. And did you sign it? A. I did.

391

Q. And was that fee arrangement in accordance with the understanding which you previously testified you had with Mr. Casey? A. It was.

Q. Did there come a time after that when you heard from Mr. Casey again in reference to the fee agreement? A. There was.

Q. And when was that? A. I would say he called me within about two or three days or thereabouts, that he wanted to see me.

Q. And did he tell you what he wanted to see you about? A. He told me that the agreement that he had written on that date would have to be changed as far as the verbiage was concerned, because of the fact that the Committee on Practices of the Treasury Department would not look with favor upon the way it was written, and so forth, but that the terms and conditions of it would remain the same.

Q. And did there come a time when you went to his office in reference to this matter? A. There was.

Q. And when was that? A. July 28, 1954.

Q. Now, prior to that time, had you paid Mr. Amann? A. There was.

392 Q. And I show you this check dated July 23, 1954 -- which I will ask the clerk to mark as Defendant's Exhibit No. 2.

THE CLERK: Defendant's Exhibit No. 2 marked for identification.

(Check dated July 23, 1954 to Lowenstein, etc. for \$1,855, signed by Harry Edell was marked Defendant's Exhibit No. 2 for identification.)

BY MR. BERLOW:

Q. I ask you if this check is the check representing payment to the Lowenstein firm? A. It is.

Q. And was that payment in full? A. It is.

Q. What was the date of that payment? A. July 23, 1954.

Q. Now, when you returned to Mr. Casey's office on July 28, at that time, to your knowledge, had the Lowenstein firm delivered all of the documents to Mr. Casey? A. They had.

Q. And did he indicate to you that they were in his office, by he, I mean Casey? A. That is correct, sir.

Q. Now, at that time, what was the situation insofar as your personal assets were concerned? A. They had all been tied up by the Treasury Department and they were in escrow at the American
393 Security and Trust Company in Washington, D. C.

Q. Did that represent all or substantially all of the money that you had? A. It did.

Q. And for how long a time had that been the situation? A. Well, it had been tied up there by the Treasury Department on or about the time that Mr. -- I believe when Mr. Amann got into the case.

Q. Was that escrow agreement worked out by Casey or Mr. Amann? A. Mr. Amann.

Q. In addition to that, were you aware at that time that the interest was running on whatever this indebtedness was determined

to be? A. Oh, definitely so, it amounted to about \$100 a week.

Q. And did you need these assets in your business that you were engaged in at that time? A. I certainly did.

Q. When you went to Mr. Casey's office on July 28, did you bring anything with you, any documents with you? Did you bring the agreement?

MR. DICKEY: Just a minute, he has asked a question, Your Honor, I object to his leading him, he said did he bring anything with him.

* * * * *

394 THE COURT: Very well, the answer will be stricken.

BY MR. BERLOW:

Q. An agreement had been prepared between you and Mr. Casey on the 15th, had it not? A. That is correct.

Q. And you had executed that agreement? A. That is correct.

Q. And Mr. Casey called you and advised you that that agreement had to be changed? A. That is correct.

Q. And when you went to his office, did you bring that agreement, the original agreement, with you? A. That is correct.

Q. Did you discuss that with Mr. Casey? A. I did.

Q. Did he repeat to you what he told you over the telephone?
A. He did.

395 Q. What was it he said then? A. He said that the verbiage in that agreement had to be changed due to the fact that the Committee on Practices would not look with favor upon the way it was written, but that the substance of it, the terms and conditions of it would remain the same and that we both would understand that.

Q. Did you deliver the original agreement to him? A. I did.

Q. And did you observe what was done with it? A. I did.

Q. What was done with it? A. He destroyed both, his original and mine.

Q. Have you seen the original agreement since? A. I have not.

Q. What else was done then? A. Then he wrote this new agreement dated July 28, 1954.

Q. Was the agreement broken into two agreements? A. It was.

Q. Now, at the time, on this July 28th, was there a figure used in the renegotiation agreement? A. There was.

Q. What figure was that? A. \$138,000.

Q. And I show you Plaintiff's Exhibit No. 5, which is dated July 28, and ask you if that is the agreement which you did sign on July 28? A. Yes, sir, that is it.

396

Q. And inserted in there was \$138,000? A. That is correct.

Q. And did you have any discussion at that time with Mr. Casey as to what the \$138,000 represented? A. No, it wasn't necessary, we both knew what it represented.

Q. And had you discussed it previously? A. We had.

Q. What did it represent? A. It represented the sum total that I would have to pay the Renegotiation Board as a result of the allowances made by Mr. Prentice.

Q. Did there come a time, after July 28, when you heard from Mr. Casey for the second time in reference to the necessity for changing the now two agreements that you had entered into? A. Yes, there was a time.

Q. When did that occur? A. That was either August 6 or August 8.

Q. And what was it that Mr. Casey said? A. He had to write another agreement and that is what it was.

Q. Did you agree to that? A. I did.

Q. Did he explain to you why he had to change it? A. Yes, he did.

397

Q. What did he say? A. He said let's revert back to our original conversation, you understand and I understand that our original agreement of July 15 is the one that we are going by, I have to write these agreements as they come forth to satisfy the Committee on Practices.

Q. Now, on July 28, had you paid Mr. Casey anything? A. I did.

Q. How much did you pay him at that time? A. \$1,000.

MR. BERLOW: I will show you, when the clerk is finished, a check dated July 28, 1954, which I will ask the clerk to mark as Defendant's Exhibit No. 3.

THE CLERK: Defendant's Exhibit No. 3 marked for identification.

(Check dated July 28, 1954, to Mr. Casey, for \$1,000, signed by Harry Edell, was marked Defendant's Exhibit No. 3 for identification.)

BY MR. BERLOW:

Q. I show you this check which has been marked as Defendant's Exhibit No. 3 and ask you if this is the payment that you made to Mr. Casey on July 28, 1954? A. That is correct.

* * * * *

398 Q. And thereafter, did you make additional payments to him so that the total payment in cash was \$2,500? A. I did.

THE CLERK: Defendant's Exhibit No. 4 marked for identification. Defendant's Exhibit No. 5 marked for identification.

(Check dated September 1, 1954, to Mr. Casey for \$1,000, signed by Harry Edell, was marked Defendant's Exhibit No. 4 for identification.)

(Check dated October 1, 1954, to Mr. Casey, for \$500, signed by Harry Edell, was marked Defendant's Exhibit No. 5 for identification.)

BY MR. BERLOW:

Q. I show you Defendant's Exhibit No. 4 and ask you if this is the second payment that you made to Mr. Casey on the retainer fee? A. It is.

Q. I show you Defendant's Exhibit No. 5 and I ask you if that is the third and last payment you made in reference to the retainer fee?

A. That is correct.

399 Q. And thereafter, as the case progressed, until it was completed, did Mr. Casey make any other requests for payments from you in reference to a fee? A. No, sir.

Q. Now, after this agreement was entered into, did there come a time when Mr. Casey or Mr. Brady commenced to discuss the case itself with you? A. There was.

* * * * *

400 Q. Other than the statement which you received from Mr. Casey in connection with the tax and renegotiation matter, have you ever received any bills or statements from Mr. Casey? A. No, sir.

Q. Did there come a time when you received a statement from -- some communications from Mr. Casey in reference to disbursements that had been made? A. Yes, sir.

Q. Now, from time to time did you pay any of the expenses that were incurred in the litigation of this matter? A. I did.

* * * * *

407 BY MR. BERLOW:

Q. Mr. Edell, after the agreement of August 6 was executed by you and Mr. Casey, the letter, did there come a time in that month when you discussed with Mr. Casey still another agreement which he wanted you to sign? A. Yes, sir.

* * * * *

408 THE CLERK: Defendant's Exhibit No. 8 marked for identification.

(Letter dated August 17, 1954, to Mr. Edell from Mr. Casey, was marked Defendant's Exhibit No. 8 for identification.)

409 BY MR. BERLOW:

Q. I show you this document which is a letter agreement dated August 17, 1954, which has been marked as Defendant's Exhibit No. 8 for identification and ask you to read that and ask you if that signature on the bottom is yours? A. It is.

Q. Calling your attention specifically to the Arabic No. 2 of that agreement which says:

"It is understood" --

This is signed by Mr. Casey, a letter to you, and it says:

"It is understood that I am not authorized to make any final settlement without your explicit approval."

Now, did you discuss that paragraph with Mr. Casey prior to the time that you signed that agreement? A. I did.

Q. Would you tell us what was said by you and what was said by Mr. Casey? A. I told him --

MR.DICKEY: Again, Your Honor, I would object to this entire line of questioning, it is not an issue in this case. We are not suing for any fee under this agreement.

* * * * *

411 THE COURT: Very well, it is admitted, the second paragraph.

(Paragraph No. 2 of Defendant's Exhibit No. 8 was received in evidence.)

BY MR. BERLOW:

Q. Then, Mr. Edell, do you recall there being a last agreement that Mr. Casey had you sign in reference to interest? A. That is correct.

Q. And that was dated long after all these matters that we are discussing? A. That is correct.

Q. And did you sign that agreement? A. I did.

* * * * *

412 Q. Now, did there come a time, Mr. Edell, when you discussed with Mr. Casey this matter of the proof of the expenses which you had incurred in the course of your earning the income which was the subject of this tax controversy? A. I don't quite understand the question.

Q. Did you discuss with Mr. Casey the matter of the expenses which were to be deducted in the renegotiation and in the income tax matter? A. Yes.

Q. Would you tell us what the discussions were? A. Well, Mr. Casey had already received a great deal of data from Mr. Amann and he, I understood, was going to evaluate that --

* * * * *

413 Q. The expenses that were to be deducted in the renegotiation case, from that income, and the travel expenses and stenographic expenses, all the expenses that would be used as deductions in the renegotiation and the tax case? A. Well, the expenses in the renegotiation case that were to be deducted were in relation to Mr. Prentice's allowances --

MR. DICKEY: Your Honor, again the question is not answered.

THE COURT: The objection is sustained. You are not answering the question, sir.

BY MR. BERLOW:

Q. In talking about this matter to Mr. Casey, did you ever use the word "expenses" when you talked to him? A. Yes, of course.

* * * * *

414 Q. Then, I will have to go on to another question. In the course of your employment during this war work, did you incur certain expenses? A. I did.

Q. And would you just briefly tell us, were they travel expenses? A. They were travel expenses, hotel expenses, entertainment expenses, various kinds of other expenses that were incidental expenses.

Q. Did Mr. Casey ever ask you about these things? A. He did.

Q. Did Mr. Brady ever ask you about these things? A. He did.

Q. Now, did you discuss it with them in relation to any documents or evidence that you have as to the existence of these expenses? A. I did.

Q. What did you say to them about it? A. I said you can find a great deal of verification of these expenses in my check books and check stubs and my diary, which indicates the travel, and from the letters that were transmitted between the various agencies and factories and myself.

Q. And in the course of these discussions, did they say to you they were doing some work in reference to these expenses? A. They did.

415 Q. And was it brought to your attention, prior to this time, that the FBI had examined these expense records? A. It was.

Q. Did there come a time when Mr. Casey or Mr. Brady, either one, mentioned to you that this matter of expenses had become the subject of some discussion with a Mr. Prentice of the Department of Justice? A. That is correct.

Q. And what was told to you by them in that regard? A. Mr. Casey informed me in July of 1956 that Mr. Prentice had agreed to allow approximately \$25,000 a year for three years for expenses, but that they had not reached a point on the service fees and that he was going down the next week with Mr. Brady to discuss it again with them.

Q. Did they indicate they had discussed this expense matter with Mr. Prentice, from time to time, thereafter? A. They had.

Q. And prior to the trial which took place in Washington, was it ever brought to your attention that the expenses that were to be agreed upon was less than \$60,000 or \$64,000? A. At no time.

Q. What was the smallest figure, insofar as expenses were concerned, that was stated to you that the government was considering? A. \$64,000.

Q. Had you seen that figure previously? A. I had.

416 Q. Where? A. In the arrangement that Mr. Amann had prepared.

Q. Did there come a time in the course of the trial when this matter of the expenses was brought to your attention again, in the course of the trial before Judge Harron? A. The only time that I heard anything in relation to expenses was the end of the first day, when I heard the word stipulation mentioned by Mr. Casey.

Q. And to whom was he talking at that time? A. To Judge Harron.

Q. Did he address his remarks to you? A. Not at all.

Q. Previously, at any time, in any hotel room, had he ever discussed the matter of expenses with you? A. No, sir.

Q. Had he ever mentioned to you that there was to be a stipulation as to \$14,000 a year being the expenses? A. No, sir.

Q. Did you ever consent to such a stipulation? A. I did not.

Q. Did there come a time after the trial when you inquired of Mr. Casey as to whether or not such an agreement had been made? A. I did.

417 Q. And when was that? A. At the end of the second day, when the trial was over, Mr. Casey and Mr. Brady went into the chambers of Judge Harron with the other attorneys and they were in there about an hour. And when they came out, it was around five o'clock, I said, what was that stipulation that you entered into? And he said, I will let you know tomorrow, I have got to catch a train for Pittsburg, and he rushed right by me with Mr. Brady. I thought I could catch him over at the Raleigh Hotel and I went over there looking for him and I was told by the room clerk that both of them had checked out in the morning.

Q. So, did you attempt to communicate with them thereafter?

A. I did, the next day I telephoned the New York office and Mr. Casey was out of town, but I couldn't get Mr. Brady on the phone for several days, and I tried it.

Q. Did you finally get him on the phone and ask him as to this stipulation? A. I did and he said he would send me a complete breakdown on the whole thing.

Q. Did there come a time when it was sent to you? A. Yes, I received it.

Q. In what form was it? A. In the form of a brief.

Q. A brief that had been filed? A. That is correct.

418 Q. After you received the brief, at that time were you aware of what had been settled insofar as the expenses were concerned?

A. Would you repeat that?

Q. When you received the brief and read it, was it apparent to you what the settlement had been, as far as the expenses were concerned? A. Yes, it was.

Q. What month and what year was that? A. August of the same year of the trial.

Q. Prior to that time, had anybody ever discussed the stipulation with you? A. No, sir.

Q. Now, after you received the brief, did you call either Mr. Brady or Mr. Casey and make an inquiry as to this stipulation? A. I did, I called Mr. Brady on the phone and I distinctly heard the operator say, "Mr. Edell is calling you from Washington," and then she called back and -- she spoke back to me and said he is not in.

Q. Did there come a time when you were able to speak to either one of them about it? A. Well, yes, it was quite sometime later, though. I went to San Francisco and Los Angeles immediately after that.

419 Q. When you spoke to them about it, who was it you spoke to, Mr. Casey or Mr. Brady? A. No, I didn't get Mr. Casey, I got Mr. Brady.

Q. And you had an opportunity to discuss it with him. A. I did.

Q. And what did you say to him and what did he say to you in reference to that stipulation? A. Well, I was furious about the thing in as much as we had been offered \$75,000 or \$64,000 as a minimum. I was furious at the fact that they had stipulated \$14,000 a year.

Q. Did you say that to Mr. Casey? A. I told that to Mr. Brady, I couldn't find Mr. Casey.

Q. What did Mr. Brady say about that? A. He said we expect to make it up in the Tax Court.

Q. Then, did there come a time when you discussed it with Mr. Casey, as well? A. Yes.

Q. And what did he say? A. The same thing that Mr. Brady said, that was the best way he could get out of the deal.

Q. At any time, had a copy of that stipulation been exhibited to you to read? A. No, sir.

Q. Had anybody asked you ever to sign the stipulation, as you had been requested to sign six agreements prior to that time? A. No, sir.

420 Q. You have seen those various letter agreements that have just been exhibited to you? A. Yes.

Q. Did you ever see the stipulation and were requested to sign the stipulation in the same manner you signed those other agreements? A. No, sir.

Q. Now, did there come a time when you were advised that the renegotiation matter was to be tried in Washington? A. Yes.

Q. And before that, was it to be tried in some other place? A. In New York City.

Q. Did you appear in New York City? A. I did, it was on a Monday morning.

Q. Was Mr. Casey there? A. No, sir.

Q. Who was there? A. Mr. Brady was there.

Q. And what occurred at that time? A. Well, Mr. Brady told me that Mr. Casey had developed a nervous breakdown and that he was going to ask the Judge for a continuance. And I said, well, I saw Mr. Casey only yesterday in the Biltmore Hotel and he was on his way to Wilmington, Delaware, with that gentleman that he introduced
421 me to. I said, when did he develop this nervous breakdown? And he shrugged his shoulders. And I said, by the way, if this case is coming up today and Judge Harron has come to New York for this case, where are your witnesses?

Q. What did Mr. Brady say to that? A. He shrugged his shoulders, he said, "I don't know."

Q. Were any witnesses there at that time? A. Not one.

Q. Did the government have any witnesses? A. They did.

Q. Was testimony taken? A. Yes, sir, there was testimony taken.

Q. And was there any cross-examination by your counsel?

A. No, sir.

Q. What time did the taking of the testimony close? A. About 12 o'clock.

Q. Thereafter, was the case reset for trial in Washington at some other time? A. Judge Harron continued it for one week from that date in Washington.

* * * * *

425 BY MR. BERLOW:

Q. Was it ever brought to your attention at any time that Mr. Casey had done any work on the income tax matter? A. No, sir, he never did any work to my knowledge on it.

Q. With whom were your discussions with reference to the income tax? A. Always with Mr. Brady.

Q. Did Mr. Casey discuss the matter with you at all? A. Yes, one day when I was in his office, I said, "Bill, why don't you go downtown
426 and interview these agents downtown instead of sending Brady, he is too young and inexperienced for this job." And Mr. Casey said, "He is doing all right."

Q. In reference to the income tax matter, after the renegotiation matter was disposed of, did you have any discussion with Mr. Brady as to the expenses to be applied as a deduction from the income tax to be charged against you? A. No, I didn't have very much of any discussion relative to that.

Q. Was it at some time brought to your attention by Mr. Brady as to what the expenses ultimately were?

* * * * *

427 Q. Well, Mr. Edell, did there come a time when you, before this income tax matter was determined, when you hired another attorney to work on the matter? A. Yes.

Q. What was his name? A. Laurens Williams.

Q. And what brought that about? A. Well, the fact remained that I was completely discouraged and disgusted with the way the case had been handled in Washington, my experiences with both these men in

relation to witnesses, et cetera, and I had no faith in the fact that Mr. Brady could be my representative before the Internal Revenue anymore than he was down in Washington on the renegotiation thing.

THE COURT: Just a minute. Who handled the renegotiation matter at the trial?

THE WITNESS: Mr. Casey and Mr. Brady.

THE COURT: Go ahead, Mr. Berlow.

BY MR. BERLOW:

Q. But the income tax matter so far as you know, Mr. Casey, had nothing to do with that? A. That is correct.

Q. And then you brought in Mr. Williams? A. That is correct.

428 Q. And did you discuss this matter with Mr. Williams in the presence of Mr. Brady or Mr. Casey at any time? A. I introduced Mr. Williams to them in their office by appointment.

Q. And what was said between the group of you at that time?

A. I told Mr. Casey that I would appreciate it very much if he would permit Mr. Williams to assist in this Internal Revenue matter.

Q. And did he do that? A. He did.

Q. And did Mr. Casey agree to that? A. He did.

Q. Now, did there come a time, was it ever brought to your attention that Mr. Casey or Mr. Brady had done any work in reference to the years 1945 — 1946 and 1947? A. They had done no work on that at all.

Q. Did you ever inquire of them if or when they would do some work on that? A. I did.

Q. And what was their answer to you? A. They said, we have nothing to do with '46 and '47, you have taken on Laurens Williams.

Q. Did you indicate to them that their contract required them to do that work? A. I did.

429 Q. What did they reply? A. They didn't reply anything except that they weren't responsible for it.

Q. Did you then retain Mr. Williams to do that? A. I did, that was part of Mr. Williams' agreement, to overlook the entire Internal Revenue thing and supervise it.

Q. Other than Mr. Williams, to your knowledge, did any other attorney do any work in reference to '46 and '47 income tax? A. No, sir.

Q. Was it at some time brought to your attention as to what the expenses were which were accepted by the United States Government in the Internal Revenue matter? A. Yes, sir.

Q. And what was that amount? A. \$14,000 for the year.

Q. Who brought that to your attention? A. Mr. Williams.

Q. And did he state to you how that figure was arrived at? A. He did.

Q. What did he say? A. He said that the stipulation in the renegotiation matter of \$14,000 just killed me and that Mr. Korr wouldn't listen to any other figure.

Q. And after that, Mr. Williams did go on and complete '46 and '47?

430 A. That is correct.

* * * * *

431 Q. Now, did there come a time when you received a letter from Mr. Brady — Mr. Casey, excuse me, advising you that you owed him some money on the renegotiation matter? A. There did.

MR. BERLOW: Excuse me, Your Honor:

Q. I show you this bill of October 7, 1957, which the clerk will now mark as Defendant's Exhibit No. 9.

THE CLERK: Defendant's Exhibit No. 9 marked for identification.
(Bill dated October 7, 1957, to Mr. Edell from Hall,
Casey & Robinson, for \$10,903.50, was marked
Defendant's Exhibit No. 9 for identification.)

MR. DICKEY: May we see it?

(The exhibit was handed to Mr. Dickey.)

MR. DICKEY: Thank you, Mr. Berlow.

BY MR. BERLOW:

Q. I ask you if this is a bill which you received from Mr. Casey for the renegotiation matter on that day? A. Yes, sir.

Q. Now, what is the amount of that bill? A. \$10,903.50.

432 Q. Now, after you received it, did you enter into a discussion with Mr. Casey in reference to it? A. Yes, I did.

Q. What was said by you and what was said by him? A. I told him that his job wasn't finished, that our agreement called for him handling both the renegotiation and the Internal Revenue or the income tax affair and that we will wait until the complete contract had been completed before we settled the sums that were due him, if any.

Q. What did he say to that? A. He said it was all right to do so.

Q. Did he say that was in accordance with your agreement? A.

He did.

Q. And was it sometime thereafter that you did receive a final bill from him? A. Yes, sir.

THE COURT: Now, by this time, you knew what the figure was for the expenses, didn't you?

THE WITNESS: The allowance?

THE COURT: Yes.

THE WITNESS: Yes.

* * * * *

433

BY MR. BERLOW:

Q. By this time, on October 7th, did you know the fact that a stipulation had been entered into in the Tax Court settling the amount of the expenses, had you received the government brief? A. Yes, I did.

Q. And had you mentioned that to Mr. Casey? A. I did.

Q. And at this time, did Mr. Casey have all of your income tax records? A. He did.

Q. And you had paid him the retainer in full, had you not? A. That is correct.

Q. And after you were advised or it was brought to your attention that this stipulation had been entered into in the Tax Court without your consent, how long after that, was it, that you retained Mr. Williams to help you in this matter? A. I believe that was in '56.

Q. Was it shortly after that, that you got Mr. Williams to help you? A. I believe it was in '56, I don't remember the exact date. It might have been the end of '56 or the beginning of '57, I am not sure which it was.

434

Q. Did there come a time when Mr. Casey rendered a final bill to you? A. Yes, sir.

Q. And that was in the form of a letter dated February 18, 1959 --

MR. BERLOW: I would appreciate your marking it.

THE CLERK: Defendant's Exhibit No. 10 marked for identification.

(Letter dated February 18, 1959, to Mr. Edell from Mr. Casey, was marked Defendant's Exhibit No. 10 for identification.)

BY MR. BERLOW:

Q. I show you this letter dated February 18, 1959 and ask you if that letter was sent to you by Mr. Casey? A. Yes, sir.

Q. And did you read that letter at that time? A. I did.

Q. And did that letter represent -- what is the total fee charged there? A. Well, the total fee including the disbursements was \$19,535.76, less retainer of \$2,500, making a net amount due of \$17,035.76.

Q. After you received that and read it, did you conclude that that charge was or was not in accordance with the understanding that you had entered into? A. It was not.

* * * * *

435

BY MR. BERLOW:

Q. And did you pay that? A. I did not.

Q. And did you discuss it with Mr. Casey and Mr. Brady at that time or thereafter? A. I don't think I did.

THE COURT: When was it that you got the bill?

THE WITNESS: You are referring to this?

THE COURT: Yes.

THE WITNESS: February 18, 1959, is the date.

MR. BERLOW: Would you mark this as an exhibit?

THE CLERK: Defendant's Exhibit No. 11 marked for identification.

(Letter dated May 25, 1956, to Mr. Edell, unsigned, on stationery of Mr. Casey, was marked Defendant's Exhibit No. 11 for identification.)

BY MR. BERLOW:

Q. I show you this letter from Mr. Casey to yourself, dated May 25, 1956, and ask you to read that and tell us --

MR. DICKEY: May we see it?

MR. BERLOW: May 25th -- (conferring with Mr. Dickey).

THE COURT: What is the year, Mr. Berlow?

MR. BERLOW: May 25, 1956.

* * * * *

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BY MR. BERLOW:

Q. I am showing you Defendant's Exhibit 11 for identification and ask you if you can identify that as a letter which is written to you by Mr. Casey? A. It is not signed by Mr. Casey, but his letters are on the left hand corner, typed letters.

* * * * *

Q. Now, this letter which has been marked as Defendant's Exhibit No. 11 for identification, says:

"I am enclosing a copy, which breaks the stipulated net profits down by years."

Were the enclosures actually enclosed in that letter? A. No, sir.

437

Q. Did you receive -- prior to your receiving that letter from Mr. Casey, had you asked him for the stipulation in reference to the expenses? A. I did.

Q. And did he say he would send it to you? A. That is correct.

Q. But despite the letter referring to certain enclosures, they were not in there? A. They were not in there.

Q. I will show you another letter, dated May 29th, and after you have identified it, I will show it to other counsel.

THE CLERK: Defendant's Exhibit 12 marked for identification.

(Letter dated May 29, 1956, to Mr. Edell from Mr. Brady, was marked Defendant's Exhibit No. 12 for identification.)

BY MR. BERLOW:

Q. I show you this letter dated May 29, 1956, in which he says he encloses a new draft with all documents, and ask you if you did receive that letter? A. I did.

Q. Was there a stipulation in there? A. No, sir.

Q. Was there a supplementary stipulation, such as this, which had nothing to do with expenses? A. That is correct.

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Q. After that, did you call Mr. Casey and ask him again for the stipulation as to expenses? A. I tried to get Mr. Casey, but I managed to get Mr. Brady and told him about it.

Q. Did he finally send it to you? A. I didn't receive it at all until much later.

* * * * *

THE COURT: Admitted, that will be Defendant's 10, 11, 12, and also 9.

(Defendant's Exhibits Nos. 9, 10, 11 and 12 were received in evidence.)

MR. BERLOW: I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. DICKEY:

Q. Mr. Edell, with regard to the stipulation of \$14,000 in expenses, your testimony is that you never saw it or heard of it prior to sometime subsequent to the settlement -- to the judgment of the court, is that correct? A. I never heard of it prior or after that, for sometime.

439 Q. I believe you testified that Mr. Brady appeared in New York for you, in the absence of Mr. Casey who was ill at the time? A. That is correct.

Q. Now, the preceding weekend -- that was on a Monday, was it not, when he appeared for you? A. That is correct.

Q. Now, during the preceding weekend, had you seen Mr. Casey? A. Yes, sir.

Q. Had you been with him on Friday? A. Yes.

Q. Had you been with him on Saturday? A. Yes.

Q. Had you been with him on Sunday morning? A. That is correct.

Q. And did he advise you on Sunday morning that he had to go to Wilmington, Delaware, on other business and would return in time for the case? A. He only told me that when the gentleman arrived that he introduced me to, and then he informed me that he had to leave for Wilmington.

Q. Had you spent a considerable amount of time with him on Saturday? A. I believe that was the day we interviewed Mr. Cordes

440

or Mr. Porter, one or the other.

Q. My question was, had you spent a number of hours with him on Saturday? A. I would say we spent quite some time.

Q. Now, on the following Monday, Mr. Brady appeared in court and announced that Mr. Casey was ill, is that correct? A. That is correct.

Q. And were you present in the court? A. I was.

Q. At all times? A. At all times.

Q. I believe you testified that certain testimony was taken in court? A. That is correct.

MR. DICKEY: I would ask Your Honor to take judicial notice of the official report of proceedings before the Tax Court of May 1, 1956, pages 1 to 28, certified to by the then reporter, Mr. Leon Zuck, a reporter pro tem of the Tax Court.

Would you like to see this?

MR. BERLOW: Is there any specific part you have in mind?

MR. DICKEY: I would like judicial notice taken of the entire testimony.

(The transcript was handed to Mr. Berlow.)

BY MR. DICKEY:

441 Q. Mr. Edell, do you recall at that session of the Tax Court that Mr. Brady objected to any witness being put on by the government, and the Court put the witness over, a Mr. Dupuy, a former agent of the FBI? A. That is correct.

Q. So that your testimony here today that there was testimony before the Court on that day is not entirely accurate, is it, sir? A. I wouldn't say so. The fact that he just objected, isn't very much.

Q. Well, the Court halted any testimony concerning Mr. Dupuy, did it not? A. No, not at all, the gentleman testified he was an agent, he had come all the way from Miami, Florida, and Judge Harron decided that inasmuch as he had made that long trip that he should be heard and he was heard.

Q. All right, sir. Mr. Edell, would you look at page 20 of that transcript and look at the bottom of it, where it starts with Mr. Brady? A. Yes.

Q. And Mr. Brady there objected to the continuing of the examination of Mr. Dupuy, did he not? A. Yes.

Q. And did the Court up-hold that objection? A. I don't think so.

* * * * *

442 A. (Reading transcript) What was your question?

Q. My question is: Was not the testimony of Mr. Dupuy halted and Judge Harron stated that he would have to appear in Washington and testify there, where he would be allowed to be cross-examined by Mr. Casey? A. I don't see that mentioned right there.

Q. All right, sir, let me see if I can find it. A. I wish you would.

Q. Reading from page 23 of the transcript:

"THE COURT: Now, Mr. Leathers," --

Mr. Leathers was government counsel in the case, wasn't he? A. That is correct.

Q. (Reading:)

"THE COURT: Now, Mr. Leathers, isn't one of your reasons for wanting to call this witness out-of-order, to save the Government the expense of bringing him here from Florida?

"MR. LEATHERS: That is correct.

"THE COURT: Well, that ground is not sufficient ground for calling this witness out-of-order. The case can't be tried this week because of the illness of Mr. Casey. Those things happen and as far as the Court knows, this is a bona fide situation, Mr. Casey is actually ill. His witnesses have been inconvenienced and he has incurred expenses.

443 Your witness is inconvenienced and you have incurred expenses, but there is an objection to the testimony of this witness.

"The testimony is in the nature of rebuttal testimony admittedly. As I understand it, Mr. Casey is in charge of the trial of this case, isn't that correct?"

Going over to the top of page 24:

"MR. BRADY: That's correct, Your Honor.

"THE COURT: Mr. Casey is not here to cross-examine this witness or to state more fully the objection to conversations with the deceased person, which Mr. Brady indicates is objectionable and hearsay.

"The Court believes that it is inadvisable under all of these circumstances to hear this witness out of order. The lawyer who is representing the Petitioners, who is in charge of the trial of this case is not here. And the Court certainly should not hear a witness when we know at the outset that the attorney in charge of the case is going to object to his testimony on the grounds of its inadmissibility.

"I am very sorry, Mr. Leathers and Mr. Dupuy, that we can't proceed in this fashion. I thought yesterday when the matter was brought up that it would be possible to hear this witness out of order, or he could have been excused yesterday; but yesterday when the matter of

444 going ahead with this case was presented to the Court, the Court was not told that Petitioner's counsel would object to the testimony of this witness. If I had known that yesterday, I probably would have told you that we wouldn't hear the witness out-of-order and he would have been let go yesterday.

"Mr. Dupuy, I do not know at this time whether this case will be heard in New York or in Washington. Since we can't hear you out-of-order and if you are a necessary witness, your availability might have something to do with the date on which this case can be heard. I think the trial of this case is supposed to take about one day, ..."

A little further down on page 25:

"THE COURT: No ruling is made on the objection at this time. The witness is excused. When he appears again, we will have him sworn again because he hasn't given any testimony."

A. Well, that took four or five pages of your reading, as far as I am concerned, there was a great deal of discussion about it.

Q. So your recollection, however, as to his testifying, is incorrect? A. It isn't my recollection that is incorrect, it is the fact that the man was there and came all the way, and Mr. Casey

445 wasn't there to protect me in the matter.

Q. But he didn't testify, did he? A. Well, not according to that, but the man was there, they discussed it for nearly an hour.

MR. DICKEY: Would the Court take judicial notice of this transcript?

THE COURT: Yes.

BY MR. DICKEY:

Q. Now, also, at the beginning of the session in New York, was there not, in your presence, a discussion of a stipulation with regard to expenses? A. I don't recall that.

Q. You listened rather carefully to what went on in this case, didn't you? A. I usually do.

Q. This was a very important matter to you, wasn't it? A. Right.

Q. And yet you don't recall that, at the beginning of this, Mr. Leathers discussed that a stipulation had been entered into? A. I don't recall its being mentioned there. It might have been, but I don't recall it.

MR. DICKEY: May I have that again?

(The transcript was handed to Mr. Dickey.)

MR. DICKEY: The Court indulge me for a moment, while I find this?

* * * * *

446 BY MR. DICKEY:

Q. Look, Mr. Edell, at the bottom of page nine and running over to the top of page ten, read it to yourself and see if that refreshes your recollection. A. (Reading transcript) This reference is purely to the fact that a stipulation had been covered, but it doesn't specify what the stipulation was, nor any amount, on this particular page, anyhow.

Q. May I read it to your sir? See if I am quoting correctly:

"However, since the stipulation which has been covered -- which has been executed covers a, some of the accounting data which will later be important and since the parties have also reached agreement as to the amount of expenses which will be allowable in the absence of records showing the expenses, it seemed important to proceed at this time with that much of the case."

Do you recall that language, sir? A. I don't recall the language.

Q. Do you recall that there was a discussion at that time that there had been an agreement reached as to the expenses which would be allowable? A. As far as I was concerned, there was no stipulation for \$14,000 that was ever mentioned to me.

447 Q. That wasn't my question, sir. My question was: At the hearing in New York, do you recall that there was a discussion in open court, at which you were one of those in attendance, at which the statement was made that there has been an agreement of expenses which will be allowed? A. I don't recall any such thing being made, that I heard.

Q. As a matter of fact, on Friday and Saturday, had you gone over a stipulation with Mr. Casey with regard to the expense? A. No.

Q. The preceding Friday and Saturday? A. No, not a definite stipulation of any amount like that.

Q. Had he informed you that he would find it most difficult to support the expenses or any expenses which you were claiming? A. He stated that.

Q. And had he also told you, either at that time or prior thereto, that once the \$183,000 offer was turned down, all component parts of that offer -- none of the component parts of that offer were available to you? A. What is your question?

Q. Well, I thought that I phrased it accurately, let me state it again. Had he advised you, either the preceding Friday, Saturday and Sunday morning, prior to the original date this hearing was set for,

448 or prior to that time, that once you rejected the \$183,000 offer which the Department of Justice made on the renegotiation, that no component parts of that offer were available to you? A. I don't recall his mentioning that to me at all. I do know that he had the advantages of discussions with Mr. Amann in relation to the stipulation of expenses that Mr. Prentice had agreed upon, and I also know that he had discussed expenses with Mr. Prentice personally in Washington, and had notified me to the effect that there would be approximately \$75,000 worth of expenses permitted.

Q. Well, as a matter of fact, you testified that Mr. Taylor of Pittman & Roberts, some three or four years before, had also told you there would be \$25,000 a year? A. That is correct.

Q. And then weren't you rather disappointed when Mr. Amann only came up with \$60,000 or \$64,000? A. No, I wasn't disappointed because that is a perfectly reasonable thing to do, to finally get down to \$64,000 from \$75,000 and it was an approximate amount, it was never settled as such.

Q. Now, Mr. Amann -- getting to the tax phase of this matter -- Mr. Amann had advised you, had he not, that it might well be that Internal Revenue would not take any of the settlement figures with the Department of Justice? A. That was in his letter.

449 Q. So that whatever had been done by way of the Department of Justice figure might not necessarily be accepted by Internal Revenue? A. He stated something to that effect in his letter.

Q. You understood that, didn't you? A. Yes, I did.

Q. And Mr. Amann's letter and calculation of the taxes that he said would be due, was explicitly based on the expense offer or the estimated expenses in Mr. Prentice's letter and he said that this was simply hypothetical, didn't he? A. He didn't say it was hypothetical, he mentioned the approximate \$40,000 tax that would be due in the Tax Court, subject to Mr. Prentice's allowances.

Q. Not in the Tax Court? A. In the Internal Revenue.

Q. Yes. A. That is what I meant.

Q. You have trouble mixing these up, from time to time?

A. I have had a lot of trouble over the years.

Q. Yes. Now, in 1959, Mr. Casey wrote you several letters asking to be paid, did he not? A. I just saw one that Mr. Berlow handed me, there might be another one.

MR. DICKEY: May I have Exhibits 21 and 22, please.

450

BY MR. DICKEY:

Q. He sent you a bill in February, did he not? A. I would like to see it.

MR. DICKEY: May I have Defendant's Exhibit 9, I believe, Defendant's Exhibit 9 or 10.

BY MR. DICKEY:

Q. Referring to Defendant's Exhibit 9, on October 7, 1957, he billed you for the renegotiation case, is that correct? A. That is correct.

Q. And that was a bill in the amount of \$9,900 plus \$1,003.50 for expenses? A. That is correct.

Q. It states on the bottom that:

"This firm retains \$2,500 which was received and reported as a retainer for the settlement of tax deficiencies."

In part, that is what it says, does it not? A. May I see it?

Q. Yes, sir (handing exhibit to the witness). A. That is correct.

Q. And you suggested to him that the whole matter be settled at one time and he was agreeable to that? A. I didn't suggest that, I suggested that he abide by our original agreement which he had originally written and which took in both the renegotiation and the tax settlement, and they were both part and parcel of the same thing and they had to be

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figured together to come to a net result.

Q. One was 30% of the savings, and the other was 30% of the savings below the tax assessment deficiency, was it not? A. That was not our agreement of July 15, 1954.

Q. That is the one you say was executed and all copies were torn up? A. That is the one that was executed by Mr. Casey in his

office and subsequently torn up by him.

Q. In your presence? A. In my presence.

Q. And your copy was also torn up? A. I gave him my copy and it was torn up in my presence.

Q. And then there was an agreement of July 28 executed? A. That is correct.

Q. And those constituted two separate agreements, one originally calling for \$138,000 on the renegotiation as the figure, is that right?

A. The July 15th mentioned \$138,000.

Q. I am talking now about July 28, sir. A. July 28 also mentioned \$138,000.

Q. Now, with regard to the July 28 agreement on taxes, does that call for 30% of the savings below the deficiency assessed? A. It does.

Q. For the years '43, '44, '45, '46 and '47? A. It does.

452 THE COURT: Does that have a number on it, please?

MR. DICKEY: That is Plaintiff's Exhibit 6, Your Honor.

BY MR. DICKEY:

Q. By the way, Mr. Edell, was there ever a deficiency assessed for '46 and '47? A. There was a mistake that was made by the Internal Revenue in duplicating a tax in both '45 and '46; in other words, I had been taxed twice and Mr. Laurens Williams discovered that and he had it corrected.

Q. Now, would you answer my question as to whether there was ever any deficiency assessed for '46 and '47? A. I don't recall any deficiency as such, there might have been, I don't know, I was out of the country a great deal.

Q. But you do recall there was a deficiency assessed for '43, '44 and '45? A. Yes.

Q. Now, with regard to the renegotiation, I show you Plaintiff's Exhibit No. 5 dated July 28, 1954, that has in it the figure \$138,000, does it not? A. It does.

Q. What does the language say right preceding the figure?

A. (Reading:)

453 "I hereby stipulate and agree that you may retain, as and for your compensation, thirty percent (30%) of the difference between the Justice Department offer of One Hundred Thirty-eight Thousand Dollars (\$138,000) and the final settlement of the dispute. It is understood that your compensation is limited to the amount stipulated in this agreement."

Q. That is right. Now, the Department of Justice offer by Mr. Prentice was \$183,000, was it not, sir? A. That is not the approach that I took to it and the approach that Mr. Amann gave to me and the approach that I gave to Mr. Casey.

Q. Let me ask you this question, sir: In the Department of Justice communication, the one by Mr. Prentice, was there any figure other than \$183,000 shown? A. I don't recall seeing the original thing from Mr. Prentice.

Q. What has been marked in evidence as Plaintiff's Exhibit No. 27, is that the settlement proposal by J. H. Prentice? A. It states so.

Q. He is the gentleman from the United States Department of Justice? A. That is correct.

Q. And what is the total figure shown on that, sir? A. \$114,000. Is that the figure you are referring to?

Q. No, sir, I am referring to the -- A. This figure here that you pointed to, the excess profit, \$12,000.

454 Q. And \$57,000 for the next year? A. That is correct.

Q. That is \$69,000, and \$114,000 for '45? A. That is correct.

Q. That is \$183,000? A. That is correct.

Q. On the Department of Justice offer, there is no \$137,000 or \$137,562.60 figure, is there, sir? A. That wasn't my agreement with Mr. Casey.

Q. Just answer my question, sir, is there any -- A. No, sir.

Q. All right. Does the agreement of July 28, 1954, Plaintiff's Exhibit 5, the one that has the \$138,000 figure in it, say anything

about Mr. Amann's calculations as to what net amount would be due?

A. No, it does not.

Q. It does, however, refer to the Department of Justice? A. It does.

Q. Thank you, sir. Now, Mr. Edell, with regard to the August 6, 1954, agreement, Plaintiff's Exhibit No. 9, that refers to \$183,000 as the Department of Justice offer, does it not? A. It does.

Q. In addition, on August 6, 1954, Plaintiff's Exhibit 7, Mr. Casey sent you a letter, did he not? A. Yes, sir.

455 Q. Did you ever receive that letter? A. I imagine I did, I would say yes, it was addressed to me there.

Q. And in the face of that letter and the new agreement, you signed the \$183,000 agreement? A. That is correct.

Q. Mr. Edell, on February 18, 1959, what has been identified as Defendant's Exhibit No. 10, was sent to you, was it not? A. Yes, sir.

Q. I believe you said you never acknowledged that? A. That is correct.

Q. On March 31, 1959, what has been identified as Plaintiff's Exhibit No. 22, starting out saying: "We haven't heard a whisper from you about paying your bill," was sent to you, was it not? A. That is correct.

Q. Did you ever acknowledge that? A. I did not.

MR. DICKEY: Will the clerk please mark this.

THE CLERK: Plaintiff's Exhibit No. 39 marked for identification.

(Handwritten letter dated April 4, 1959, to Mr. Casey from Mr. Edell, was marked Plaintiff's Exhibit No. 39 for identification.)

* * * * *

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November 27, 1962
Washington, D. C.

* * * * *

459

HARRY E. EDELL

the witness on the stand at the time of the adjournment of Court on November 26, resumed the stand, was reminded he was still under oath, was examined and testified further as follows:

CROSS EXAMINATION

BY MR. DICKEY:

460

Q. Mr. Edell, when we recessed yesterday I had handed you, I had marked for identification, I don't know whether I had handed it to you yet or not, Plaintiff's Exhibit 39 for identification.

Would you look at that Sir? Is that letter in your handwriting dated April 4th, 1959? A. It is.

Q. Did you write that letter? A. I did.

* * * * *

Q. Referring, Mr. Edell, to Plaintiff's Exhibit 39 for identification, is there anywhere in this letter that you make any complaint with respect to the services rendered by Mr. Casey? A. None whatsoever. It only refers to my conditions, at the time due to the death of two members of my family.

MR. DICKEY: I would like to move the admission of Plaintiff's Exhibit 39 into evidence.

THE COURT: It may be admitted.

* * * * *

461

[BY MR. DICKEY:]

Q. Mr. Edell, you said that this referred only to your health and that of your family, I believe, or that of your family.

There is a sentence in here, is there not, This notice is to assure you that I have not intended to ignore your letters.

Do you recall saying that in there? A. That is correct.

Q. And those letters were letters from Mr. Casey inquiring about his fee? Is that correct? A. It could be. If that was the letter you were referring to.

Q. Were they the letters you were referring to? A. I presume they were.

Q. I see. Mr. Edell, I hand you a carbon copy of a letter addressed to Mr. Harry E. Edell, unsigned, but bearing the dictating initials of WJC dated April 9, 1959, identified as Plaintiff's Exhibit 40 for identification.

Did you see the original of that letter, Sir? A. I imag[ine] I did get it.

Q. Did you ever reply to that? A. I don't recall doing so.

462 MR. DICKEY: I move the admission of Plaintiff's 40 for identification.

THE COURT: Admitted.

(Plaintiff's Exhibit 40 admitted in evidence).

[BY MR. DICKEY:]

Q. On the date of April 9, 1959 which is the date of Plaintiff's Exhibit 40 did you ever contact Mr. Casey or Mr. Brady or anyone else in his office, with respect to the payment of the fees which they claimed you owed? A. I did.

Q. When was that? A. It was following my arrival in Washington subsequent to that. I called Mr. Casey on the phone. He wasn't in. I got Mr. Brady and I told him I was back in town and that I completely disagreed with his bill inasmuch as I didn't feel he ever earned one cent more from me than what the original contract called for.

Q. I see. You never wrote him to that effect? A. I did not.

Q. When was that call, Mr. Edell? A. Following my arrival in Washington after that.

Q. Well that was April 9, 1959, or was it May, June, or July?

A. I don't exactly know what date, but it was subsequent to this letter.

* * * * *

463 Q. Mr. Edell, I hand you what has been identified as Plaintiff's Exhibit, and is in evidence as Plaintiff's Exhibit 21, being a letter of May 14, 1959, did you ever see that letter, Sir? The original of that letter?
A. I did.

Q. Was it subsequent to May 14th that you called Mr. Casey's office and being unable to talk to Mr. Casey you talked to Mr. Brady?

A. I told Mr. Casey.

MR. DICKEY: Just answer one question first please.

THE WITNESS: It was subsequent to that letter.

Q. [By Mr. Dickey] I see. Go ahead you told Mr. Casey or Mr. Brady --? A. I told Mr. Brady.

Q. Oh, what did you tell Mr. Brady? A. I told Mr. Brady that the next time I got into New York, I would make an effort to drop in and discuss it with him.

Q. Did you do that? A. I did not because I had been advised that I did not owe them anything.

464 Q. Who advised you of that? A. Counsel.

Q. Who? A. Mr. Williams.

Q. Mr. Laurence Williams? A. Yes.

Q. Now are you changing your testimony Mr. Edell, that you called Mr. Brady and told him you didn't owe him anything or were you simply advised by Mr. Williams and thus did nothing? A. Oh no, I called Mr. Brady and told him that first.

Q. When did you call him? A. Subsequent to May.

Q. Subsequent to the letter of May 14th? A. April or May.

Q. Let us get the chronological order. After getting the letter of May you consulted with counsel, is that correct? A. It wasn't a case of consulting counsel. Mr. Williams and I were very close friends, we saw each other almost three or four nights a week as friends.

When I discussed this with him and told him the circumstances and he also admitted that the contract of July the 15th had not been carried out properly.

Q. Had he ever seen the contract of July 15th that you claim?

465 A. No Sir, that had been destroyed by Mr. Casey.

Q. Then how did he know? A. Because I told him what the contents were.

Q. Oh I see. So from the contract which you allege was drawn up

in Mr. Casey's office, Mr. Williams gave you an opinion under that contract that you didn't owe him anything? A. That had been discussed with Mr. Williams for months and months.

Q. Just answer the question. A. That is correct.

Q. Did you ever give Mr. Williams a written resume of that contract? A. Yes he had seen many of the papers.

Q. Just answer the question, Mr. Edell. A. Yes, I had.

Q. Did you ever give him a written resume of the alleged contract of July 15th? A. No, Sir.

Q. Now subsequent to May, after having consulted with Mr. Williams, or was this because of previous consultation that you called Mr. Brady and told him you weren't going to pay anything in May? A. It was the result of the conversations I had had with Mr. Williams.

466 Q. Mr. Williams hadn't expressly advised you that you owed him nothing or to tell him that, but you just made up your mind from the conversations you had with Mr. Williams that you didn't owe Mr. Casey anything and you had advised Mr. Brady of that? A. That is not the fact.

Q. What is the fact then? A. The fact was, Mr. Williams told me in his opinion that Mr. Casey had breached the contract, and under those conditions he didn't think I owed him anything.

Q. When you called Mr. Brady, did you tell him that? A. Not all of that. I merely told him the conclusion.

Q. You didn't tell him Mr. Williams was of this opinion? A. No, I did not.

Q. That was the conclusion you had arrived at as far as your conversations with Mr. Brady were concerned? A. With Mr. Williams. You said Mr. Brady.

Q. No, I said this was your conclusion as far as your conversation with Mr. Brady was concerned when you talked to Mr. Brady you advised him it was your conclusion, you had concluded you didn't owe him any money? A. I told that to Mr. Brady.

Q. Now Mr. Edell, do you recall the taking of your oral testimony prior to this trial in my office on June 23, 1960? A. Yes, Sir.

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Q. Referring to page 17 of your deposition Sir, -- Just a minute -- do you need some water? A. No, I have some right here.

Q. Were you asked the following questions and did you reply thereto? A. Which questions are you referring to?

Q. By the 14th of May, beginning with the second question on the top of that page, by the 14th of May you hadn't been in New York, is that correct? Answer: I don't recall that far back whether I was or wasn't. Question: Were you in New York at all during the balance of 1959? Answer: I must have, because I went up there I presume. I don't know exactly what part of '59.

Did you ever make any effort to get in touch with Mr. Casey or Mr. Brady? Answer: No, I had Mr. Williams to take care of all my affairs from that point on.

Q. Were you asked those questions and did you make those answers? A. I did at that time.

Q. And are you now testifying differently from that time? A. I can refresh my memory, the same as Mr. Casey did when he testified.

Q. In other words, you are now saying your present recollection is better than your recollection in 1960? Is that correct? A. As to that point, it is.

468

Q. That is what I mean, as to that point. A. That is correct.

Q. What has refreshed your recollection between 1960 and today? A. A review of all my papers.

Q. Did you make a memorandum of your telephone conversation with Mr. Brady? A. No, I did not.

Q. That wouldn't help refresh your recollection about that conversation? A. No, just refreshing the memory of my itineraries.

Q. What particularly with respect to your itineraries refreshed your recollection as to a telephone conversation, Mr. Edell? A. The simple fact that I had gone to New York. I knew I had called up Casey and he wasn't in and I asked for Brady and I told Brady just exactly what I mentioned a few minutes ago.

Q. But you didn't recall this in 1960, two years ago? A. No, I didn't at that moment.

469 Q. Now Mr. Edell, I believe you testified that subsequent to the first hearing of this case, in the renegotiation case in New York, that you proceeded to the New England states and secured certain witnesses? Is that right? A. That is correct.

Q. And did you know as a matter of fact those witnesses were in New York the preceding week end? A. They told me when I was in Worcester, when I said they told me, Mr. Jack Owen and Mr. Joe Hern.

Q. Just a minute. Would you answer my question first and then we will get into the next question.

Did you not know as a matter of fact they were in New York that preceding week end? A. As far as I knew, they weren't at the trial.

Q. That still isn't my question. Did you not as a matter of fact know they were in New York the preceding weekend. A. To the best of my knowledge they were not in New York.

Q. All right. I see. I hand you Plaintiff's Exhibit 32, a letter addressed to you of November 21, 1955, a copy of a letter, unsigned, but with the dictating initials EJB.

Did you receive that letter? A. That is correct.

Q. You did receive it? A. That is correct. What was that date, if I may ask?

470 Q. November 21, 1955. A. Right.

Q. And that letter states in pertinent part, I have just returned to the office after being out of town for about a week, and I decided to write you a few things that took place on my trip to Worcester. Joe Hern and Jack Ownes, are very fine gentlemen, and they gave me their time very willingly, both have high regard for the work you performed for the company, and both are willing to testify on your behalf.

I obtained a breakdown from Jack Ownes concerning the amount of renegotiation business which the company did during the years 1943 and 1945, and the amount of non-renegotiation which the company did during this period and then it goes on and says other things.

Now are you stating when you went to see these gentlemen after the meeting in New York, after the first hearing in New York in May 1956, approximately six months later, that Mr. Hern and Mr. Owen said they never talked to Mr. Brady? A. They never mentioned a visit to me.

Q. That isn't my question. My question is very plain. Are you stating that Mr. Hern and Mr. Owen stated they had never talked to Mr. Brady? A. They never mentioned to me that Mr. Brady had been there.

471 Q. Did you ask them? A. No, I did not.

Q. Then you are not stating in this Court today that Mr. Brady did not talk to Mr. Owens or Mr. Hern? A. I am not stating that was never mentioned.

Q. No, just answer my question. A. That is correct, but no where in that letter does it refer to any of the other witnesses.

Q. Well, let us talk about some of the other witnesses. Did you see Mr. Paletino? A. I did.

Q. On the same trip? A. I did.

Q. And on that trip did he tell you that Mr. Brady had never seen him? A. Mr. Paletino had never heard that name at all. He might have been there but Mr. Paletino didn't recognize the name of Brady.

Q. In other words, you asked him specifically, did you see Mr. Brady? A. No, I did not.

Q. Oh, I see. Then how do you know he never heard the name of Brady? A. Because I asked him if anybody had written to him in re-
472 lation to coming to New York as a witness.

Q. What did he tell you? A. He said I don't recall any contacts from anybody from that office.

Q. From what office? A. From this office of Casey and Brady.

Q. Then you did mention Mr. Brady's name to him. A. The office of Brady and Casey.

Q. Did you also visit with Mr. West on this trip at Long Island City? A. No, Mr. West was out in Long Island. I didn't visit with him.

Q. Again, however, Mr. Edell you are not meaning to testify that Mr. Brady testified falsely when he said he spoke with Mr. Paletino at

his place of business, are you? A. It isn't a question of his veracity, it is a question of what actually happened.

Q. Will you answer my question, Sir, instead of giving me a lecture. You are not testifying here today that Mr. Paletino told you that he never saw Mr. Brady? A. Mr. Paletino didn't tell me that he did or didn't see Mr. Brady. He told me that he had never heard from Mr. Brady.

Q. You never asked him specifically whether he saw Mr. Brady?

473 A. I asked him whether he had heard from an office of William J. Casey and Brady.

Q. You didn't ask that of Mr. Owens and Mr. Hern you just asked that of Mr. Paletino? A. That is right. Because Mr. Brady had told me in New York that Mr. Paletino was somewhere in New York at the time on Monday morning but he didn't know where he was.

Q. Now, I believe Mr. Edell that you testified that you first secured Mr. Williams' service in this case in 1956, to the best of your recollection? Or, perhaps 1957? Is that correct? A. That is right.

Q. Do you recall what part of the year it was? A. Well I had been discussing this with Mr. Williams for months because we lived together at the University Club and as far as the actual employment of him is concerned, I believe it was some time in the early part of 1957.

It might have been the latter part of 1956, I don't know. There is a record of that some place.

Q. When did you first take him to see Mr. Casey or Mr. Brady?

A. Immediately after he had decided to take on the problems for me.

Q. Incidentally, did he take them on for you as a lawyer or simply

474 as an advisor and as your alter ego? A. He was supposed to advise me as an alter ego. And advise me as to what proceedings to accept and decline because I had become completely confused with the manner in which Mr. Casey was handling that case.

THE COURT: Mr. Edell, after this renegotiation matter was finished, you were presented a bill by Mr. Casey, were you not?

THE WITNESS: Yes, Ma'am.

THE COURT: And you did tell him that you wanted to wait until the income tax matters were finished before taking up the matter of this bill for renegotiation?

THE WITNESS: Yes, Ma'am.

THE COURT: Well, if you felt Mr. Casey, that you didn't owe Mr. Casey anything, why did you not tell him so after he had finished the renegotiation matter and had sent you a bill?

THE WITNESS: For the simple reason that our original agreement was a combination of two services.

THE COURT: I know, you said that. At the same time why did you not tell him then, I don't owe you anything?

THE WITNESS: Because he had mentioned the fact that they were going to try to make up the deficit of the renegotiation in the Tax Court, that they expected to get a much larger allowance for expenses.

475 THE COURT: But you knew that he expected you to pay him for the renegotiation, and why didn't you tell him then that you didn't owe him anything for this renegotiation matter?

THE WITNESS: Well, I didn't think the contract had been completed at that moment, the original contract.

THE COURT: No, I do not want to ask anything more.

THE WITNESS: Excuse me.

THE COURT: Go ahead, Mr. Dickey.

MR. DICKEY: Thank you, Your Honor.

[BY MR. DICKEY:]

Q. Mr. Edell, were you present at all times in the Court Room in the Tax Court proceeding in Washington? A. Are you referring to the renegotiation?

Q. That is the only one that was in the Tax Court. A. I get confused occasionally.

Q. Renegotiation, yes Sir? A. Yes.

Q. Were you present when the case was called on the opening day of the trial in Washington? A. Yes, Sir.

Q. Were you sitting at counsel table or were you sitting back in

the audience, or where were you sitting, Sir? A. First, I sat in the audience, and then I walked up and sat at the counsel table next to Mr. Brady.

476 Q. Mr. Edell there has been introduced in evidence the transcript, I believe, as Plaintiff's 16a, b and c. Pointing to 16a, would you turn to page 21 of the exhibit please, Sir? At that page mid-way down the page, do you see colloquy between the Court and Mr. Leathers who was Government counsel? A. I do.

* * * * *

A. Are you going to start up here please so I can get the continuity of it?

Q. Yes, Sir. The Court: It was handled orally? Mr. Leathers at that time of the first hearing, Mr. Casey, it is reflected in the supplementary hearing.

The Court: Do you mean in New York the other day? Mr. Leathers: In New York. It is page 17 of the transcript. The Court: You have received your copy? Mr. Leathers: Yes, I have. The Court: I suppose it has not been taken up in Court? Mr. Leathers: So that the record will be perfectly clear -- The Court interrupting, let me see, you say you stipulated something about expenses of \$16,000? Mr. Leathers: \$14,000 each year, a total of \$42,000.

Do you see that there? A. Yes, I do.

477 Q. Did you hear it when it took place? A. I did not. I only heard a stipulation had been made. I didn't hear the figures in reference to the \$42,000.

Q. You didn't hear the figures of \$42,000 or \$16,000? A. I knew a stipulation had been entered into but I didn't know what it was.

Q. Mr. Edell, do you recall at the end of the hearing that the Court called you back as a witness itself and questioned you when you were on the stand? A. Yes, I do.

Q. Referring to 16c, which is the transcript of May 11, 1956, would you be good enough to turn to page 495 of that transcript?

Do you see as far down just below the middle of the page on 495 where the witness, which was you, answered: American Security and Trust Company, Washington, D.C.? A. I do.

Q. Well there then ensued for the balance of that page and the balance of page 496 and down to just below the middle of the page of 497 colloquy between the court and counsel? Is that correct? A. I see that.

478 Q. Do you see at the bottom of the page 497, Mr. Leathers: We have stipulated the expenses which are attributable to at a rate of \$14,000 a year.

Do you see that? A. I do.

Q. You were present when that statement was made were you not?

A. That period of the thinking, yes.

Q. Did you hear it then? A. Yes, I heard it at the very end.

Q. I see. A. That was at the very end of the trial.

Q. Right. Haven't you testified here that you never heard of that figure before? A. No, Sir, I never did.

* * * * *

Q. So you are now telling us that the first time you ever heard the \$14,000 figure was just as it has been read now? A. At the very end of the trial.

Q. Did you at any time ever write to Mr. Casey challenging his authority to stipulate \$14,000 a year, and tell him he had no right to do this? A. I had an agreement with him that he mustn't make any defini-
479 tive agreements without me. There was a letter in effect on record. As a matter of fact, an agreement.

Q. By that, by your testimony right now, do you mean the letter of August 17, 1944, which is in evidence as Defendant's Exhibit 8? A. That confirmed -- this second paragraph confirmed our oral agreement and that was put into writing as it was stipulated right here.

Q. You say you had an oral agreement of what date, Sir? A. The original agreement was made on July 15th and then we incorporated it into that.

Q. Does this Defendant's Exhibit 8 refer to any matter other than the refund claim for the \$7,500? A. The refund claim I had nothing to do with this at all. The refund claim had nothing to do with Mr. Casey's ethics in any way, shape, or form, and the second paragraph is in relation to all matters pertaining to my renegotiation, and it was not, and he was not to make any agreements without my final authorization.

Q. But the explicit language contained in Defendant's 8 is contained in no agreement you had with Mr. Casey except that, is it? A. To the best of my knowledge that is the firm and final one we incorporated.

480 Q. And it is only in that particular letter? A. That is correct.

Q. Now Mr. Edell, do you recall what was the best offer you had ever had to settle the renegotiation case, that is the amount of the excessive profits which the Department of Justice said were owing? The gross amount? A. The best offer that I had was incorporated in Mr. Amann's agreement.

* * * * *

Q. Mr. Amann was not a Government official? A. No.

Q. So what was the best offer you had from the Government official as to the amounts of profit in excessive profits? A. I didn't discuss it with a Government official.

Q. Didn't you see the letter from Mr. Prentice? A. Yes.

Q. Wasn't it for \$183,000? A. That is correct.

Q. Wasn't the judgment of the Tax Court for a total of \$150,000?

A. I am not too sure of those figures. When it got into the Tax Court,
481 I am not too sure of those figures.

Q. Do you mean, Mr. Edell, that you do not know that the Tax Court rendered a decision for \$150,000 even as you sit there now?

A. I presume they did. I have never been in the Tax Court. You are referring to the real tax court, not the renegotiation?

Q. No, I am referring to the renegotiation of the tax court. They were in the Tax Court on the renegotiation? A. That is correct.

Q. And did you not know in the renegotiation in the Tax Court the Court rendered a verdict of \$150,000 as being excessive profits? A. I

believe that is correct now that you have explained the difference between the courts.

Q. It is the same court, Mr. Edell, it just handles different matters.

Had any of your other counsel ever gotten a better figure of \$183,000?

A. I think that was the figure that Mr. Pittman and Roberts came down with, and I think it is the one Mr. Amann came down with.

Q. \$183,000? A. I believe that is correct.

482 Q. And after the trial the verdict was \$150,000, and wouldn't you say that was an improvement of \$33,000? A. On services rendered.

Q. On total. A. On services rendered.

Q. On everything that was the amount of the judgment of the Court, was it not, as to the excessive profits which you had to repay? A. Yes, but that is not my interpretation. My interpretation is that I did not accept the amount of expenses that had been offered to us by Mr. Prentice and upon which my July 15th agreement with him was arranged.

That was my agreement with Mr. Casey, that he had to better the \$138,000 cost. I was only interested in dollar cost, if Mr. Casey couldn't better that; I didn't need Mr. Casey at all.

And \$138,000 is what I was to pay and that is the only thing that made any sense to me. All other details didn't mean anything.

And also the \$40,000 that Mr. Amann had evaluated would cost me in the Tax Court. Those were the two principle things my agreement with Mr. Casey was. All other things were superfluous to me.

483 Q. Did you ever have an agreement with Mr. Casey referring to any evaluation that Mr. Amann had made of your position?

A. That was in our July 15th agreement.

Q. The one that was torn up? A. That is correct.

Q. In other words on July 15th you entered into an agreement, that is to say it is on the basis of the Amann calculation? A. There was nothing else to go by.

Q. Well, wasn't the letter from Mr. Prentice available at that time? A. The agreement with the letter --

Q. Just answer the question. A. I don't understand which letter you are referring to.

Q. All right. I will show it to you.

Referring to Plaintiff's Exhibit 27 dated 4/21/54 headed Settlement Proposed by J. B. Prentice, December 16, 1953. That was in existence when you discussed this matter with Mr. Casey and allegedly made a fee agreement on July 15th, wasn't it? A. That is correct. It must have been by the dates here.

Q. And that totals \$183,000 doesn't it Sir? A. That does. I presume, I didn't go through that.

484 Q. Let us go through it -- \$1,257 and \$114,000 that is \$183,000.

A. That is absolutely correct. But that wasn't what my agreement with Mr. Casey was.

Q. This agreement was on the basis of what Mr. Amann had to say, is that what you are saying now? A. My agreement was on the basis of dollars to be saved as incorporated in the proposal by Mr. Prentice to Mr. Amann. That was my agreement with Mr. Casey.

Q. Now in July 1954 there was a deficiency assessed against you as far as the Internal Revenue was concerned, wasn't there? A. I don't recall it. I may have been out of the country at that time. And I am not familiar with all these volumes of papers.

Q. Didn't you know as of that date there was a \$175,000 assessed against you as a deficiency? A. That was the tax court decision, I presume, yes.

Q. That wasn't the tax court deficiency, that was the Internal Revenue deficiency, the examining agent? A. Yes.

Q. Right? A. I presume so.

485 Q. Now on March the 8th, Mr. Amann wrote you a letter which has been identified as Plaintiff's Exhibit 37, is that correct? A. That is correct.

Q. And it is that letter which you say is the basis of the agreement on the savings in your income tax matter? A. This letter is the basis upon which Mr. Casey and I agreed to save dollars for me and in this it

specified approximately \$40,000 would be my cost in the tax court after the renegotiation.

In other words \$138,000 in the renegotiation court and \$40,000 in the tax court.

Now upon this and only these two instruments that have been mentioned, that was all our agreement entered into. If it wasn't for these two instruments I would have nothing else to work with.

Q. You had the deficiency from the Internal Revenue to work with, didn't you? A. I don't understand those things. I employ counsel and CPAs to work those things out for me.

Q. And you had Mr. Prentice's letter of \$183,000 to work that out? A. Yes, Sir.

Q. Now, Mr. Edell, would you look at the third paragraph of Plaintiff's Exhibit 37, the letter of March 8, 1954, and read it to yourself, Sir?

486

A. I read it.

Q. Am I properly paraphrasing it to say, of course I don't know whether the Internal Revenue Service will accept these proposed expenditures, these estimated expenditures that the Justice Department had estimated? Is that properly paraphrased? A. That is correct.

Q. Do you mean to testify then that a lawyer would make an agreement based on hypothetical figures, that is Mr. Casey? A. This wasn't hypothetical at all. We had Mr. Prentice's agreement to go by, which is the basis of this also.

Q. Well let us get back to Mr. Prentice. Here is the Prentice proposal Plaintiff's Exhibit 27. Do you see the word expense there? What does it say after that? A. Estimated.

MR. DICKEY: Thank you, Sir.

Q. [By Mr. Dickey] Now with regard to Mr. Williams, do you recall taking Mr. Williams to Mr. Casey's office and meeting Mr. Brady there on January 14th, 1958? A. I don't particularly remember the exact date but I know I went there with Mr. Williams.

Q. How long prior -- was that the first visit you had made there at the time you saw Mr. Brady? A. I don't think so. I think the first

487 time was immediately after Mr. Williams had agreed to act for me, and I think that was the early part of 1957.

Q. Incidentally as far as 1943, 1944, and 1945, were concerned was the ultimate settlement of the deficiency made by Mr. Casey's office ever improved upon by Mr. Williams? A. Mr. Williams?

Q. Just answer that question and give any explanation you want to but will you answer yes or no, Mr. Edell? A. You mean the deficiency?

Q. Was the settlement of the deficiency which Mr. Casey's office made ever improved upon by Mr. Williams? A. Mr. Williams improved upon the 1945 and 1946 taxes. I know that.

Q. All right, would you explain that to us? Are there any duplication of taxes? A. In 1945 and 1946 which Mr. Williams uncovered and he proceeded to get the Tax Department to straighten it out and it was a great savings for me.

Q. Can you see this, Mr. Edell? A. I can.

Q. The amount of \$62,592.54 taxes for 1945? Did you ever pay any lesser amount than that, Sir? A. I don't recall how much I paid. I have paid so much money out to lawyers and so forth, that I don't re-
488 member what the amounts are. My CPA has always taken care of that.

THE DEPUTY CLERK: Plaintiff's Exhibit 41 marked for identification.

(Document marked for identification).

Q. [By Mr. Dickey] Mr. Edell, I hand you what has been marked Plaintiff's Exhibit 41 for identification, being a Power of Attorney and ask you to look at that, and to look at the second page of it also? Have you ever seen that document before and several other copies of that document? A. Yes, Sir, that is my signature.

Q. Where did you sign this document? A. In Mr. Williams' office.

Q. Who prepared it? A. Mr. Williams. The --

Q. His office in any event. A. It specifies his office. I presume it was done there.

MR. DICKEY: Your Honor please, I offer this in evidence.

MR. BERLOW: No objection, Your Honor.

THE COURT: Admitted.

[BY MR. DICKEY:]

Q. Now Mr. Edell did you ever, did there ever come a time when Mr. Williams advised you he had to execute another Power of Attorney?

489 A. It could be. If you would show it to me, it might refresh my memory.

Q. Did Mr. Williams ever tell you there had been an error made and he had to designate individuals rather than offices? A. It could be.

THE DEPUTY CLERK: Plaintiff's Exhibit 42 marked for identification.

(Document marked for identification).

Q. [By Mr. Dickey] I will show you what has been marked Plaintiff's Exhibit 42 for identification and ask you if you have ever seen that document before? A. I have. This is my signature also.

Q. Where was this document prepared? A. It must have been prepared in Mr. Williams' office.

Q. What was the date of Plaintiff's Exhibit 42 for identification? A. May 20, 1958.

MR. DICKEY: I move the admission of that exhibit for identification in evidence, Your Honor, please.

MR. BERLOW: No objection.

THE COURT: Admitted.

(Document admitted in evidence).

490 [BY MR. DICKEY:]

Q. Plaintiff's Exhibit 41 is for what date, Sir? A. May 2nd, 1958.

Q. Did you ever execute a power of attorney prior to May 2nd, 1958 for Mr. Williams? A. I couldn't tell you at this moment.

Q. Mr. Williams wasn't working on a contingency fee, was he? A. No, Sir.

Q. He worked on a flat fee? A. I don't exactly know how they arrived at their fees but when he submitted his bill to me I paid him with a check, and that is all I know.

Q. That was in the amount of \$7,500. A. That is correct, it took exactly one minute to write it out when I received his bill.

Q. I believe you said your relationship with Mr. Amann, your testimony was about a fine relationship personally between you and Mr. Amann? A. I wouldn't say personally, he was my brother's attorney and my attorney and as such over a period of years you get to call each other by their first names, I presume. He was never at my house and I was never at his house.

Q. Wasn't your testimony, your only difficulty with Mr. Amann was with his senior partner, you didn't like him? A. I never had any
491 difficulty of any kind. I may have had a misunderstanding but never any difficulty because I admired and respected Douglas Amann and even suggested that he leave that firm.

Q. Mr. Edell, you didn't answer my question. Did you not testify on direct examination that you had some difficulty with his senior partner, that you didn't get along well with him? A. That is correct.

Q. Now will you answer my question, but you never had any problems with Mr. Amann? A. That is correct.

Q. You first retained Mr. Amann on March 20, 1951, didn't you? A. I beg your pardon.

Q. You first retained Mr. Amann on March 20, 1951? A. I don't recall the date.

MR. DICKEY: Will you please mark these as exhibits?

THE DEPUTY CLERK: Plaintiff's Exhibit 43 marked for identification. Plaintiff's Exhibit 43a marked for identification.

(Documents marked for identification).

Q. [By Mr. Dickey] I show you a letter addressed to Lowenstein, Pitchard, Amann and Parr, bearing the date of March 20, 1951, identified
492 as Plaintiff's Exhibit 43 for identification, bearing the typewritten signature of Harry Edell.

Did you send that letter, Sir? A. I did.

Q. Does that refresh your recollection as to when you first employed them? A. That does, the letter and the date, yes, Sir.

Q. And I show you a bill marked paid for \$2,750, being \$2,500 for services, and \$250.00 for expenses. Is that correct? A. That is correct, I paid them the initial part of their services.

* * * * *

493 Q. -- did there come a time when Mr. Amann billed you for additional moneys for services? A. Yes, Sir.

Q. Did you object to that bill? A. There were certain bills I objected to because they were so petty, such as fifteen cent telephone calls and other things of a like nature.

* * * * *

495 Q. Mr. Edell, look at Plaintiff's Exhibit 44 for identification, being a letter of October 23, 1951, addressed to you from Mr. Amann and see -- is that the original letter received by you? A. This one is.

Q. And Plaintiff's Exhibit 44a for identification, being a letter of October 23, 1951 for \$2,500, was that bill received by you?

And in fact was it enclosed with the letter of October 23rd which is Plaintiff's Exhibit 44 for identification? A. I presume they were obtained together because they are dated the same.

Q. I show you Plaintiff's Exhibit 45 for identification, being a copy of a letter addressed by you to Mr. Amann. A. That is correct.

Q. Dated October 26, 1961, did you send the original of that letter?

496 A. I did.

Q. Then I show you what has been marked as Plaintiff's Exhibit 46 for identification, dated November 8, 1951, a letter addressed to Mr. Amann apparently enclosing a check for \$2,500 signed by you.

Is that your signature there? A. That is correct.

Q. Now you first retained Mr. Amann in March of 1951, is that correct? A. According to that, yes.

Q. And then in October he billed you for an additional \$2,500? A. According to that, yes.

Q. Then in November you ultimately paid the \$2,500? A. That is correct.

Q. You first said you would like to have a discussion with him, didn't you? A. Yes.

Q. What discussion did you have?

* * * * *

497 A. Eight months had gone by and nothing concrete as yet had taken place. As far as my case was concerned and I wanted to know, as a business man, just how far we were going to go with expenses, and I believe any business man has the right to inquire regarding that.

Q. So you inquired? A. So I inquired.

Q. Now did there come a time when you terminated your relationship with Mr. Amann? A. There was.

Q. Was that relationship terminated in an amicable manner? A. Very much so.

Q. Mr. Edell, I show you a letter which has been marked as Plaintiff's Exhibit 4 from Lowenstein, Pitchard, Amann and Parr, addressed to you, dated July 21, 1954? A. Yes, Sir.

Q. Would you look at that and see if you would like to revise your answer just given? A. Well it is four pages long. I do not think we should take up the time while I read all of that.

THE WITNESS: Just give me some question and I will answer it.

Q. Beginning with the top of the last page just read that sir.

A. That is correct.

498 Q. And you still state your parting was on an amicable relationship? A. Of course, it was. This is purely a business letter objecting to something. That is done every day in the week between business people. One just doesn't accept bills without questioning them.

Q. Did there come a time in the course of your employment of Mr. Amann in which you complained to him from time to time that he wasn't doing anything? A. I certainly did.

Q. And did you have a similar complaint with regard to Pittman and Roberts that they weren't doing anything? A. No, I didn't not to

any degree because I knew they were doing the best they could under the circumstances and I was very inexperienced at that moment as to how things proceeded.

As a matter of fact I was also out of the country a great deal of the time, in India, in China, in Formosa, Egypt, and North Africa, and every place you could think of.

Q. I believe you testified you engaged Pittman and Roberts for the renegotiation case and for the tax case, is that right? A. Yes, Sir, that is correct.

THE CLERK: Plaintiff's Exhibit 47 marked for identification.

* * * * *

499 Q. [By Mr. Dickey] I hand you what has been marked Plaintiff's Exhibit 47 for identification, being a letter addressed to you from Pittman and Roberts dated March 1, 1951 and I direct your attention to the second paragraph of that letter and ask you to read it, Sir? A. We will continue our negotiations with the Department of Justice and endeavor to work out a stipulation concerning your renegotiation liability when these conferences have been concluded we will communicate with you directly for your approval and if our proposal is satisfactory to you -- is that what you want me to read?

Q. That is not the second paragraph. A. It is understood that this firm will have nothing whatsoever to do with the settlement of your income taxes presently being audited by the Collector of Internal Revenue in New York City.

Q. Does that cause you to revise your answer that they were handling your income tax material also? A. As far as I was concerned at that period they were both one and the same thing to me, because one was interlocked with the other.

500 MR. DICKEY: Your Honor please, I offer Plaintiff's Exhibit 47 for identification into evidence.

* * * * *

THE COURT: Admitted.

(Document admitted in evidence).

[BY MR. DICKEY:]

Q. Now Mr. Edell, Plaintiff's Exhibit 4, being the letter of July 21, 1954 addressed to you from Mr. Amann, it refers in there to your letter of July the 15th, does it not?

Right at the beginning? I have your letter of July the 15th. Do you have a copy of that letter of July 15th? A. To Mr. Lowenstein, and Mr. Amann?

Q. Yes, Sir. A. I wouldn't know if I have it. I don't know where it is at this minute. I have no idea, if there is one.

Q. Do you recall what the contents of that letter were? A. Not at this moment. It was a four page letter.

501 Q. No, I am talking about your letter of July 15th, do you recall that? A. No, I don't recall what was in there. That was way back in 1954.

MR. DICKEY: Yes Sir, I understand that and that is why I asked that.

Q. [By Mr. Dickey] Do you recall Mr. Casey telling you that he would not represent you until Mr. Amann had withdrawn from the matter?

A. As an attorney, but he had no objection to meeting with Mr. Amann.

Q. I understand, but as an attorney he wouldn't represent you until Mr. Amann had withdrawn? A. That is correct.

THE DEPUTY CLERK: Plaintiff's Exhibit 48 marked for identification.

(Document marked for identification).

MR. BERLOW: Where is the last of that letter?

MR. DICKEY: I do not have it.

[BY MR. DICKEY:]

Q. Mr. Edell, I hand you what has been marked Plaintiff's Exhibit 48 for identification, appearing to be a carbon copy of a letter dated July 15th, 1954.

Two pages of said letter, would you look at the first two pages of that and read it carefully and see if that refreshes your recollection as to the contents of your letter of July 15th to which Mr. Amann refers in Plaintiff's Exhibit 4? A. Yes, Sir.

502 Q. Do you recall how many pages were in the original letter?

There are only two pages here. A. No, I don't recall.

Q. Is the language in this letter, would you read it carefully and see did you write that letter? A. I wrote that letter. You don't have to worry about that. I will admit to that.

* * * * *
Q. Mr. Edell, I believe you testified that you had paid Mr. Amann how much money over this period of time? A. I can't tell you exactly but somewhere between 12 and 15 thousand dollars.

* * * * *
503 Q. You paid Pittman and Roberts some \$6,000? A. Approximately that, yes.

Q. And you paid Mr. Williams some \$7,500? A. That is correct.

Q. Did any of those gentlemen do anything for you that Mr. Casey did not do? A. (Laughter on the part of the witness). It all depends upon the agreement that Mr. Casey didn't carry out his agreement with me. When I had arrived with Mr. Casey I had already learnt the type agreement that I wanted.

Q. Now is it your testimony that the July 15th agreement referred to Mr. Amann's estimate of the tax savings, is that correct? A. Plus the renegotiation.

Q. Just one at a time? A. Yes, sir.

Q. It did not refer to the revenue service deficiency assessment?
A. Do you mean Mr. Amann's letter?

Q. No, Mr. Casey's agreement did not refer to the deficiency assessment by the Internal Revenue but rather referred to an estimate by Mr. Amann? A. That is true.

Q. It is also your testimony that the agreement of July 15th referred to Mr. Amann's calculation of the net worth of the Justice Department offer and not to the Justice Department offer itself? Is that correct?

504 A. That is correct.

MR. DICKEY: I have nothing further.

MR. BERLOW: Mr. Edell, the Court inquired during the course of examination as to the bill which you received on October 7th from Mr. Casey which is marked as Defendant's Exhibit 9. I just want to ask you a few questions in reference to that.

REDIRECT EXAMINATION

BY MR. BERLOW:

Q. After you received that bill did you have, and just answer this question yes or no, did you have a discussion with Mr. Casey in reference to it? A. I did.

Q. And how long after receipt of the bill, was it, that you had this discussion with Mr. Casey? A. Within a few days.

Q. Now at any time thereafter did you receive another bill, statement, letter, or anything in writing, requesting payment of the renegotiation fee alone? A. I never got another one.

Q. I show you defendant's Exhibit 10, which is dated February 18, 1959, about a year and a half after the renegotiation bill was received, and I ask you if that bill was the first request that
505 you received from Mr. Casey for payment after he submitted the bill for the renegotiation? A. That is correct.

Q. Now when you discussed this with Mr. Casey, the matter of the renegotiation bill, which has been marked as Defendant's Exhibit 9, when you had your oral discussion with Mr. Casey as to that bill, did you at that time explain to him in detail your understanding as to what the agreement between you and he consisted of? A. I did.

Q. And did Mr. Casey agree or disagree with your explanation?
A. He agreed.

Q. Did he write anything expressing this agreement with your understanding? A. He did not.

Q. Now would you tell us what you told him at that time as to what was your understanding as to the agreement that was entered into between the two of you? A. I said: Bill, you haven't done only half the job, you haven't yet improved on Mr. Amann's cost in the Tax Court, estimated cost in the Tax Court of approximately \$40,000. This is part of our original agreement and if you improved on one or improved on the other, or vice versa, they must be bounced out so we come to a net result.

506 Q. Did Mr. Casey reply to that? A. He said that is true.
He agreed to that.

Q. Did you ever hear from him in reference to that matter again until the completion of the income tax matter? A. I did not.

Q. Now Mr. Dickey inquired as to whether or not at the trial of this case before Judge Heron it came to your attention that a stipulation had been entered into as to expenses.

Did that come to your attention at that time? A. Not as to the amount of expenses.

Q. But it was brought to your attention that such a stipulation had been entered into? A. That is correct.

Q. Did you make inquiry of Mr. Casey as to the terms of that stipulation? A. I did both the first night and the second night.

Q. Mr. Dickey wanted to know whether you ever made written inquiry of Mr. Casey as to that written stipulation and your answer was no, you didn't? A. That is correct.

Q. Did Mr. Casey ever make written inquiry of you prior to the time the stipulation was entered into, did he ever inquire of you in writing as to whether or not this stipulation was acceptable?

507 A. He did not.

Q. Did Mr. Casey correspond with you frequently or infrequently during this period of time? A. Very frequently.

Q. Could you give us an estimate of the time or the number of letters that Mr. Casey or Mr. Brady wrote to you during the period of time they represented you? A. That is very hard to do; that is very voluminous.

Q. Was it as many as 25 or 50? A. Oh, it was much more than that.

Q. In any of the letters that they wrote to you they retained copies, did they not? A. Yes, sir.

Q. In any of the letters they wrote to you prior to the time this stipulation was entered into, did they ever advise you that such a stipulation was going to be entered into? A. No, sir.

Q. Did there come a time when they did send you something in writing, advising you that this stipulation had been entered into?

A. No, sir, the first time I had ever heard of it, I believe, was the brief I received in March or August of that year.

Q. And in their brief was mention made of this stipulation?

508 A. I don't remember exactly whether they did or didn't.

Q. How many agreements did Mr. Casey all together ask you to sign? A. I believe there were six of them.

Q. And did you sign all of them? A. I did.

Q. Now specifically in reference to the one that is marked Defendant's 8, the second paragraph, it says: It is understood that I am not authorized to make any final settlement without your explicit approval. Do you remember Mr. Dickey inquiring as to this?

A. Yes, sir.

Q. Now prior to the time that Mr. Casey and yourself executed that, did you discuss the various agreements that had preceded it? A. I discussed the first one particularly.

Q. And did you discuss it in reference to his not having authority to make final settlement? A. I sure did.

* * * * *

509 Q. Referring again to Mr. Dickey's interrogation as to this letter, did you at any time, was it understood orally at any time, that Mr. Casey could make a settlement of this matter without your consent? A. He could never make a settlement without my consent.

Q. Now after it did come to your attention when you received the brief, and after you had had this discussion with Mr. Casey as to his premature bill on the renegotiation matter, did you or did you not become concerned as to your relationship with them? A. I was definitely upset. I was furious, as a matter of fact about the stipulation made in court.

Q. And did you at some time or other retain someone to supervise their work? A. I did.

Q. And who was that? A. Mr. Laurence Williams.

Q. And you said you paid him. I show you this check dated April 1, 1959 and ask you if that is the check you made to Mr. Williams?

A. It is.

Q. Did Mr. Williams constantly keep you advised as to discussions and arrangements Mr. Brady was making to the Internal Revenue? A. He did.

510 Q. Now Mr. Dickey went into some lengthy interrogation as to Mr. Amann's and your relationship.

After this exchange of correspondence with Mr. Amann, did you invite Mr. Amann and Mr. Casey to have lunch together? A. I did.

Q. And did you and Mr. Amann and Mr. Casey have lunch together? A. We did.

Q. And did you discuss Mr. Amann's calculations as to the renegotiation and the tax matter? A. We did. That was the purpose of the luncheon.

Q. Did Mr. Casey indicate a lack of understanding of Mr. Amann's calculations? A. Not at all.

Q. Now at the time you entered into the agreement that is written here, that is July 28th, 1954, you signed that agreement at Mr. Casey's office? A. I did.

Q. Now at that time did Mr. Casey call Mr. Prentice and inquire as to whether the offer was still open? A. I don't know whether he did or not.

Q. Now whether the offer was still open at that time was something you and Mr. Casey assumed, was it not? A. That is correct.

Q. That was a hypothetical assumption? A. That is correct.

511 Q. And the same assumption was made in regard to the tax matter, wasn't it? A. That is absolutely correct.

* * * * *

Q. All of these letters Mr. Dickey exhibited to you, all of this correspondence between yourself and Pittman and Roberts, and Amann and Lowenstein, all of those letters were they not, in the possession of Mr. Casey and Mr. Brady prior to the time that you entered into an agreement with them? A. Yes, sir.

512 Q. When was it all of this correspondence was delivered to Mr. Brady? A. July 23, 1954.

Q. And of the six agreements that Mr. Brady had you signed, most of them were executed after he had gotten all of this correspondence? A. That is correct.

* * * * *

Q. Did Mr. Casey prior to his accepting employment as your attorney, did he make any detailed inquiry of you as to the nature of your relationship with your prior attorneys? A. He did not.

Q. And did you explain that to him? A. I did.

Q. And was this explanation in accordance with the correspondence that Mr. Dickey has exhibited to you? A. It was.

Q. And did Mr. Casey say under the circumstances, because you made inquiries as to bills and disbursements, that he would not undertake to represent you? A. He did not.

Q. Was it understood that you as a client, were entitled to make inquiries as to the nature and the basis for a bill? A. Yes, sir.

513 MR. DICKEY: I would object to that. It calls for a conclusion from the witness.

MR. BERLOW: I will withdraw the question, Your Honor.

THE COURT: Very well.

BY MR. BERLOW:

Q. I show you this exhibit which has been marked as Defendant's 14 for identification and ask you to read it, the date of that, and tell me whether or not that refreshes your recollection, that the deficiency asserted in the tax case was reduced to a writing in a many page report series, 1949, as early as 1949? A. Yes, sir.

Q. And was that the document that you have there, if you recognize it? A. This is a deficiency notice from the Treasury Department for the years 1943, 44, and 45.

Q. What is the total figure that appears there as deficiency total additional tax? A. \$175,944.29.

Q. Was it ever explained to you whether or not that figure took into account the expenses at all? A. None at all.

Q. It disregarded any expenses? A. Completely.

* * * * *

514 Q. Mr. Dickey developed these other lawyers whom you employed had not been on a contingency fee arrangement, is that a fact? A. That is correct.

Q. They were employed on an hourly basis? A. Hourly or daily, I don't know how they arrived at it.

Q. Now I ask you, did any of these other attorneys that ever represented you, ever enter into any stipulation without your consent in writing? A. Never.

Q. Your consent was obtained in writing in all of these instances? A. At all times.

Q. Did Mr. Williams explain to you in detail the nature of this type settlement? A. He did.

Q. Did he explain all of its elements? A. He did.

515 Q. And after that detailed explanation did he exhibit the documents to you? A. Yes, sir, before and after.

Q. Mr. Amann, in fact, sent you these detailed calculations showing the settlement Mr. Prentice had proposed, did he not?

A. That is correct.

Q. And did Mr. Amann explain that to you in detail? A. He did.

Q. Did he explain to Mr. Casey in detail? A. He did.

Q. Did he make that explanation in your presence? A. He certainly did.

MR. BERLOW: I have no further questions, Your Honor.

RECROSS EXAMINATION

BY MR. DICKEY:

Q. I believe you said Mr. Amann sent these materials over to Mr. Casey on July 23rd? A. That is correct.

Q. Don't you mean July 27th, Mr. Edell? A. No, I received Mr. Amann's request for \$1,855.00 in a letter dated July 21st and I made the check out and immediately delivered it to him, or mailed it to him, I don't know which it was. And he said he would send them up that day.

516 Q. Was that as of that date you are basing your July 23rd date on? A. That is correct. I was not in Casey's office to receive them.

Q. You weren't there when they got them? A. No, sir.

Q. As a matter of fact Mr. Edell, how many stipulations did your other counsel enter into during the course of their representation of you? A. As to what?

Q. As to anything. A. I don't know of any stipulations other than the customary things. It wasn't pertinent as to settlement as far as dollars were concerned.

Q. As a matter of fact they didn't enter into any stipulations, is that correct? A. I don't know whether they did or not.

Q. Your meeting with Mr. Amann and Mr. Casey you said was in July. Isn't it a fact that that was in May? A. It could have been in May. As a matter of fact I believe it was before July.

Q. It was before July? A. That is right.

Q. Although you testified it was after July, after the letter.

517 A. Oh no, no.

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JOSEPH SHER

having been called as a witness by the deferdant, and having been duly sworn, took the stand, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BERLOW:

Q. Would you state your full name please? A. Joseph Sher.

Q. Where do you live, Mr. Sher? A. 1005 Platford Lane,
Silver Springs, Md.

518 Q. How are you employed? A. I am self-employed.

Q. In what profession? A. As an accountant.

Q. Are you a certified public accountant? A. I am.

Q. How long have you been a certified accountant?

A. Approximately 11 years.

Q. And where did you receive your certification? A. In the
District of Columbia.

Q. And prior to that time had you also done accounting work?
A. I have.

Q. For how long a time have you been an accountant? A. For
approximately 20 years.

Q. And does your work involve you in Federal income tax
matters at all? A. It does.

Q. Do you specialize in those matters? A. I do.

Q. Have you had any educational training in accountancy?
A. I have.

519 Q. Where was that? A. At St. John's University, Brooklyn,
New York; at the American Institute of Tax; Tax studying here,
and also at the D.C. Workshops.

Q. Did you receive a degree from any University? A. Yes,
I have.

Q. What University is that? A. St. John's University,
Brooklyn, New York.

Q. What was the degree that you received? A. Bachelor of Business Administration.

* * * * *

Q. I show you plaintiff's Exhibit 6 for identification, which is a letter dated July 28, 1954 signed by Harry Edell and William J. Casey, and it is addressed to Mr. Casey from Mr. Edell.

Did there come a time, Mr. Sher, when I gave you that contract and asked you to read it and examine it? A. You did.

Q. And did you do that? A. I did.

Q. Now after you had done that, did you examine -- I show you Defendant's 14 for examination which is the Treasury Department, Internal Revenue Service, a letter to Mr. Edell from that service, and ask you if you examined that as well? A. I have.

* * * * *

520 THE DEPUTY CLERK: Defendant's Exhibit 15 for identification. (Document marked for identification).

* * * * *

BY MR. BERLOW:

Q. This is the first and second pages of this. I show you what
521 has been marked as Defendant's Exhibit 15 for identification, Mr. Sher, and ask you whether I delivered this to you previously and asked you to tell us what that is? A. This is a letter from the Internal Revenue Service of the United States Treasury Department, addressed to Mr. Harry Edell and in substance it says this is the proposal for the settlement of the proposed transaction filed by this office and has been accepted.

Q. What are the enclosures? A. It is the final preparation of the 1943, 44, 45 tax deficiencies for the years in question.

Q. I show you Plaintiff's Exhibit 37, which is a letter from Mr. Douglas Amann to Mr. Edell, dated March 8, 1954, and ask you if that was exhibited to you previously? A. Yes, it was.

Q. Now based on those documents and the contract, Mr. Sher, did I ask you to make certain arithmetical and mathematical computations? A. You did.

Q. Did you make those computations? A. I did.

THE COURT: Defendant's Exhibit 1 was offered a short time ago and I understood you to say you had no objection.

MR. DICKEY: No objection, Your Honor.

THE COURT: Defendant's Exhibit 1 for identification is admitted into evidence. (Document admitted into evidence).

* * * * *

Q. (By Mr. Berlow:) I show you Defendant's Exhibit 16 for identification, and I ask you if that is a chart showing the calculations you made? A. It is.

* * * * *

524 Q. Mr. Sher, I think I asked you as to the documents which you examined, and do you have before you now all of the documents you examined prior to the preparation of this chart? A. Yes, sir.

THE COURT: Suppose you give us the numbers they are. I believe you said Plaintiff's Exhibit 6? Is that right?

THE WITNESS: Yes, Your Honor.

THE COURT: Defendant's 14?

THE WITNESS: Yes, Your Honor.

THE COURT: And what else?

THE WITNESS: Defendant's 15.

THE COURT: 15?

THE WITNESS: Yes, Your Honor. And Plaintiff's 37.

525 Q. (By Mr. Berlow:) Are those documents enumerated all of the documents that were used in the preparation of this chart?
A. Yes, sir.

Q. Now referring to column 1, which is headed Proposed Deficiency. Now, I ask you to refer to the contract which is dated July 28, 1954 and is marked Plaintiff's Exhibit 6 and ask you if that expression is used in that contract? A. It is.

* * * * *

MR. BERLOW: I will withdraw that question, Your Honor.

Q. (By Mr. Berlow:) Did you determine, Mr. Sher, from one of the documents that you have already mentioned, did you make a determination of what was the proposed deficiency? A. I did.

Q. What document did you use to make that determination?

A. Defendant's Exhibit 14, Internal Revenue Service Proposed Deficiency Report.

Q. And where on that document do the items appearing in column 1 appear? On what page of that document? A. On the latter page dated August 26, 1949, from the Second New York Division, 90 Church Street, Internal Revenue Service.

526 THE COURT: May I see the paper that he has just described this from? I cannot tell by reference to these pages what they are.

Q. (By Mr. Berlow:) Now from what document did you determine the figures contained in column 2 headed Final Settlement?

A. Defendant's Exhibit 15, United States Treasury Department, Internal Revenue Service, the examining agent's report.

Q. Is that on the second page? A. Of the analyses is on the second --

Q. Where is the final settlement? What page is that on?

A. On the first page of his report.

* * * * *

THE COURT: You say that was number 15, page 1? Is that what you are saying?

THE WITNESS: Yes, Your Honor, the page right behind the addressing letter.

* * * * *

527

BY MR. BERLOW:

Q. But the figures obtained from that paper, are the figures that you used under the column, Final Settlement, are they not, Mr. Sher? A. Yes.

Q. Referring now to column 3, did you make a determination of the amount repaid as a result of renegotiation? A. Yes.

Q. And where did you get that figure? A. From the same Report.

Q. After you had assembled those three columns showing the items by the year, did you make an additional calculation? A. Yes.

* * * * *

528 Q. Would you tell us what you assumed the agreement was? A. When you came to me, you said to me here are documents, here is the contract and now determine the clients liability.

Q. In accordance with the agreement did you make certain calculations? A. Yes.

* * * * *

529 Q. Will you tell us, Mr. Sher, what you assumed the agreement was after you read it? A. I assumed that the agreement had certain figures in here. And I used the figures that to my mind were as they were stated in the contract and interpreted those items into figures.

Q. And then did you make some calculations based upon certain figures? A. Yes, I did.

Q. What were the calculations that you made?

* * * * *

530 MR. BERLOW: I will start all over again.

Q. Did you make a determination as to what calculations had been made in accordance with that agreement? A. Yes.

Q. What calculations did you determine had to be made? A. Well --

Q. What additions or subtractions? A. I determined that I have to arrive at a balance.

Q. What did you have to add from or to what or subtract?

A. I had to start with the proposed deficiency. To that I had to subtract --

THE COURT: What did you start with for the proposed deficiency?

THE WITNESS: \$175,944.29, Your Honor. From that I had to deduct the amount repaid to the United States Government as per the agent's report.

Q. What figure was that? A. \$115,180.53.

Q. When you did that, what figure did you arrive at?

A. \$60,763.76.

Q. That appears in the summary underneath the calculation?

A. Yes, sir.

Q. And what other figure did you use? A. Then I had to find out what was actually paid in the final settlement of the income taxes.

531 Q. And what was that figure? A. \$97,898.80.

* * * * *

532 Q. Now did you, Mr. Sher, in reading the contract, did you read the sentence, look at it please, did you read the last sentence of the first paragraph which says: It is understood and agreed that in determination of your fee the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation.

Just tell me, did you read that? A. I did.

Q. Did you deduct and did you decide what the proposed deficiency was?

THE COURT: He has already testified he deducted \$115,180.53, didn't you, and you had left \$60,763.76?

THE WITNESS: Yes, Your Honor.

* * * * *

533

BY MR. BERLOW:

Q. What did you assume in making these calculations?

A. I assumed that I had to, if I was to prepare a financial statement for this gentlemen, I would have to reflect in his financial statement any liability that he would be subjected to of any consequence, whether it is this contract or any other contract. As an accountant it is my duty to do it. Otherwise, so I prepared two analyses.

* * * * *

Q. Well isn't it a fact, what you did Mr. Sher, in accordance with this contract, with its language, from the deficiency proposed by the United States Government, did you reduce that by the amount repaid as a result of the renegotiation? A. I did.

Q. What figure did you come up with? Is that \$60,700?

A. Yes, sir, \$60,763.76.

Q. Then did you determine the difference between the proposed deficiency and the final settlement? A. Yes.

534 Q. And what was that? A. The proposed deficiency, \$175,944.29, and the final settlement was \$97,898.80.

Q. After deducting the amount paid as a result of renegotiation was there or was there not a cash loss? A. After deducting these two amounts there was a tax saving, a cash saving.

Q. When you deducted the amount repaid as a result of the renegotiation was there a cash loss? A. Yes.

Q. What was that? A. \$37,135.04.

* * * * *

Q. Did you prepare another chart on the second page?

A. I did.

535 Q. Did the item designated as final settlement income tax, did you get that from the same place you testified you have already got it? A. Yes sir.

Q. Incidentally that is precisely to the penny, the same figure which appears on this chart, which is now Plaintiff's Exhibit 18a?

That is the same precise figure? A. Except for five cents difference.

Q. A difference of five cents. Did you examine a letter from Mr. Amann to Mr. Edell dated March 8, 1954? A. Yes, sir.

Q. And did you take the figures that appeared in there as being the taxes due? A. Yes, sir.

Q. And did you subtract that from the final settlement arrived at? A. Yes, sir.

Q. And were there more or less taxes paid as the final settlement than would have been paid in accordance with Mr. Amann's letter? A. There were additional taxes paid.

Q. How much more? A. \$56,833.97.

Q. Did you determine a figure as being the savings alleged to have taken place in the renegotiation? A. That was given there, also written material on it, which I didn't examine. I just accepted.

536 Q. As being \$33,000? A. Right.

* * * * *

Q. When you used the expression Prentice's proposal, Mr. Sher, would you tell us whether or not you made reference in using that expression, to the Amann letter of March 8, 1954? A. Yes, I did.

Q. What was the, in using the expression Prentice proposal, what was the figure -- what was the amount of dollars that you used as appeared in that letter of Mr. Amann's of March 8, 1954? Does that appear in the second line there? Are you looking at the second page?

I am asking you about the chart which you had prepared.

A. Yes.

537 Q. What was the figure that you used which you obtained from the Amann letter of March 8, 1954? A. \$41,064.83.

Q. And you accepted that as being the savings in renegotiations, the sum of \$33,000? A. Yes, sir.

Q. I point to this, which is Plaintiff's Exhibit 17, and there has been substituted for that Plaintiff's Exhibit 17a, I point to line 3 on that, which is called Reduction obtained by Attorney Casey, \$33,000, and ask you if that is the same figure that you used? A. That is the same figure.

Q. Now returning to the chart on page 1, your first chart rather, the first page thereof, which is Defendant's 16, that chart was prepared after you had carefully read and examined Plaintiff's 6, wasn't it? A. Yes, sir.

* * * * *

CROSS EXAMINATION

BY MR. MILLER:

* * * * *

538 Q. Suppose you tell me and then give to me the documents upon which you relied in making your chart. A. The proposed deficiency, Defendant's 14. The Internal Revenue Agent's report shown, a tax liability for taxable years in the December 31st 1943 and inclusive 1945.

THE COURT: What is the exhibit number?

THE WITNESS: Exhibit 15. Defendant's Exhibit 15 and I also used Defendant's No. 15 which is column 3 of the report submitted.

Q. (By Mr. Miller:) What other document did you use?

A. And the contract.

THE COURT: I think it would be better to specify them by number.

THE WITNESS: Exhibit 6, Plaintiff's Exhibit 6 and --

THE COURT: Plaintiff's 37, wasn't it?

MR. MILLER: Plaintiff's Exhibit 6 is what he gave me.

THE WITNESS: And here is Plaintiff's Exhibit 37, and also the letter, or whatever the --

THE COURT: Defendant's Exhibit 15, page 1, wasn't it?

THE WITNESS: Well that page 1 was the accompanying letter.
Page 1 is the accompanying letter, Your Honor, to the tax liability
539 deficiency, and the letter of the statement that shows \$33,000.

MR. BERLOW: That is on 17a.

Q. (By Mr. Miller:) Do I understand you used and used only
Defendant's 14, Plaintiff's 37, Plaintiff's 6, Defendant's 15 and the
chart which is -- A. I didn't use the chart. I used the information
from which the chart came because this was prepared before I saw
the chart.

Q. What are you referring to then? Are you referring to a
typed sheet which sets up the information on the chart? A. Right.
No, no.

Q. Well what did you use? A. Well, as I said, I will see if I
have a notation in my files where I used to obtain the \$33,000. Less
savings renegotiations I have a comment here, \$33,000.

MR. BERLOW: We have explained them all except where he
got the \$33,000.

THE WITNESS: Oh yes, that was given to me except that was
accepted. Mr. Berlow gave me the \$33,000 and he said use this \$33,000
as a deduction in the final statement, in the second statement.

BY MR. MILLER:

Q. Then would your figure of \$33,000 be the difference between
the final gross settlement offer of the Department of Justice of \$183,000
540 as shown on Plaintiff's Exhibit 17 and the judgment of the Tax
Court after trial of the gross amount, of the excessive profits was
\$150,000? The difference between those were \$33,000? A. Yes.

Q. That is the \$33,000 you used as showing the savings that
were reflected as effected by Mr. Casey on renegotiation, on the
renegotiation case? A. That is right. That is a savings of renegotiation.

Q. Mr. Sher, your column 1 -- now you have listed for the
years 1943, 1944 and 1945 the proposed deficiency, haven't you?
A. Yes, sir.

Q. Now it is your understanding, is it not, that those figures totalled \$175,944.29 were the amount of deficiencies in income taxes that the agent assessed or claimed were due by Mr. Edell in addition to what he paid for income taxes before for those years? A. Yes, sir.

Q. They were deficiencies? A. Yes.

Q. Isn't it also your understanding that the \$175,000 figure contained within it adjustments for excessive profits that Mr. Edell was claimed to have owed the United States Government? A. If that
541 was the basis upon which the revenue agent determined the \$175,000 then that is --

Q. Wasn't that the basis on which he determined the \$175,000? A. I didn't go into that because I was, all I was governed by was the proposed deficiency.

Q. Well, do I understand you don't know what basis the proposed deficiency was arrived at by the agent? A. No. I mean I didn't go into it. According to the statement I was supposed to prepare, was what was the proposed deficiency, that is what I went into.

The contents that made up the proposed deficiency wasn't required for my computation.

Q. Well now, didn't you have defendant's 14, which is the basis of the proposed deficiency? A. According to the word proposed deficiency in the contract, it didn't -- all I had to do was to accept the revenue agents words. I am not a lawyer.

Q. Well, I know but all I am going to ask you about is that you are not construing any contract as to what proposed deficiency means in a contract, are you? A. No, I am going by the revenue agent's figures.

Q. And you looked at the revenue agent's figures, didn't you?

542 A. That was all I was concerned with. I set that forth. That is all I was concerned with because I was specifically concerned with the proposed deficiency.

* * * * *

THE WITNESS: I am not a lawyer and I was not interpreting any contract.

* * * * *

BY MR. MILLER:

Q. Will it make any difference in your calculations if you knew, if you had read defendant's 14, which was in your possession, being the agent's report, that the \$175,000 figure included computations whereby the Government was claiming excessive profits from Mr. Edell and hence was giving him credit for income on which he had paid a tax, on which he wasn't required to pay it, would not that have made a difference in your computation? A. It wouldn't have made a difference at all because I was only concerned with the terminology of proposed deficiency.

Q. Where did you get the terminology of proposed deficiency?

A. Other CPA's and tax experts went into that prior to that.

543 MR. MILLER: I disclaim that answer as being unresponsive

THE COURT: Now just a minute. We do not care what other accountants have done. What we want to find out here is what you have done.

Now you listen to his question and then just answer the question as he puts it.

Q. (By Mr. Miller:) Mr. Sher, don't you realize that your figure in column 3 repaid as a result of renegotiation, contains computations giving the tax payer credit for income tax as paid on excessive profits? Don't you realize that? A. I do.

Q. And don't you realize also that same credit was built into column 1, \$175,000, because the agent in computing it, had also taken into consideration taxes paid on what turned out to be excessive profits? Isn't that right? A. Right.

Q. In other words, then you made a deduction twice, or claimed a credit twice?

THE COURT: Give him a chance to answer these questions.

THE WITNESS: Well I didn't -- I started off -- I have to repeat again because it is the -- it is the tax to live with -- you will have to
 544 live with me a little bit for me to prepare a statement of this type.

I had to get the figures from the sources mentioned in the contract. The proposed deficiency. I had to accept what I saw. Years have transpired and if they were right or wrong I couldn't have done anything with them. I had to use the final settlement from the Internal Revenue Report which was accepted and paid.

It also said that I am supposed, that the proposed deficiency would be reduced by any amount repaid by Mr. Edell and there is a \$115,180.53 which I deducted, Your Honor.

* * * * *

BY MR. MILLER:

Q. I would like now, if you will please, answer my question as to whether or not it is true that the total of column 1, Proposed Deficiency, and total of column 3, Repaid as a Result of Renegotiation, contained a double credit to the tax payer to the extent he is given credit for payment of taxes on what turned out to be excessive profits. Isn't that right? A. You are asking me that as an accountant?

Q. I am asking you as a witness, sir. If you don't know, say so.

* * * * *

545 THE WITNESS: He paid taxes on \$115,000 -- he paid taxes on figures which made up \$175,000.

The tax -- I will rephrase that. He paid taxes on a sum which, which if effected a proposed deficiency of \$175,944.29.

Q. (By Mr. Miller:) Now the \$175,000 claimed or proposed deficiency, according to the Defendant's Exhibit 14, the Agent's Return, already contained credit as excessive profits, didn't it?

I refer you to page 8 of Defendant's 14, for example. On page 16 I think -- pardon me, pages 8 and 14 I think show what we are discussing, Mr. Sher. A. The proposed deficiency was based on this report, yes.

* * * * *

Q. Will you tell us whether or not the amount claimed for the proposed deficiency on taxes already contains built into it a credit to the tax payer on account of excessive profits on which he had previously paid income tax?

546

Do you follow my question? A. The reason I am hesitating is that he paid certain taxes on certain figures. What he paid or how much he paid and on what the figures were, I don't know.

Q. Isn't it necessary to know what those figures were or to know what the deficiency consists of? A. In this particular case, no, because this deficiency was prepared August 26, 1949.

Anything that transpired some three years later, or when they settled, has no bearing on what I had to do here.

Q. Mr. Sher, I am not asking you what he had to do when they settled. I am asking you what the computations shown there, if the Internal Revenue or the Government hadn't already made a computation on the excessive profits as of that date and not afterwards? A. Over here I see they are using a partnership income; they mentioned two people, Harry Edell and Lewis Edell, so I don't know on what basis.

Q. Do you see the figure \$85,000, Mr. Sher? A. Yes.

Q. What does it say? A. It says (b) reduction of excessive profits due to unilateral determination in renegotiation proceedings instituted by the Army Department.

547 It is under the caption Schedule No. 8a, Explanation of Items No. 7. Partnership Income Understated \$42,073.93.

Q. Pardon me. I just asked about the \$85,000. A. Yes, but I have to tell you this where it is coming from. I have to give you the complete --

Q. Finish your answer. A. -- the (a) CRAR June 9, 1948, on partnership route taxable 100% due taxpayer. Income paid RAR \$111,108.81. Income per return \$36,969.89. Increase \$74,138.92.

Q. Now having read all of that, will you tell me what the \$85,000 figure is? A. It says here reduction of excessive profits due to unilateral determination in renegotiation proceedings instituted by the Army Department.

Q. Now Mr. Sher, doesn't that to you, as an accountant, mean that the Internal Revenue Service is deducting from taxable income an amount that they have unilaterally, they or someone else, has unilaterally determined to be excessive profits? Isn't that what it says there? Isn't that what it means? A. If that is what it says, it is a reduction of excessive profits due to a unilateral determination and renegotiation from proceedings instituted by the Army Department. That is what it says.

548 Q. Yes, so that means, does it not, that the Internal has already in arriving at what you call proposed deficiency, they have already made computation giving tax payer, giving the taxpayer credit for excessive profits determined on a unilateral basis, in that case the sum of \$85,000 for the year in question?

Isn't that correct? A. No I can't answer that because I would have to review every facet of this report from 1 to 17 to make certain that is what it means.

I didn't even see this. This is the first time I saw this. You may be right.

Q. Haven't you testified that report consisting of 17 pages, or whatever it is, is one of the basis upon which you made your computation in the chart? A. I testified I took the deficiency. I didn't go into the heart that made up this deficiency.

Q. You don't know anything about the way that deficiency is arrived at? A. I don't. And --

Q. Just answer my question, do you or do you not? Do you or do you not know how that deficiency is arrived at? A. No, I do not.

* * * * *

549 Q. Now Mr. Sher, do you or do you not know that column 3, repaid as a result of renegotiation, contains a computation giving the

tax payer credit for excessive profits as determined by the tax court?

You know that, don't you, or do you? A. No, the only thing I know --

Q. No, just tell me if you don't know, I won't inquire.

I understand you don't know whether one and three contain the same item of computations for renegotiation? A. I don't know.

Q. Now you do know, do you not, that the proposed deficiency of \$175,944.29 means final settlement of \$97,898.80 equals a certain amount of savings? A. Yes, sir.

Q. How much is the amount of tax savings on that basis? A. This is the difference between my column 1 and my column 2, the difference of tax savings is \$98,045.49.

Q. And you don't know or don't you know that Mr. Casey's fee contract entitled him to 30% of the difference between the amount of
550 the proposed deficiency and the amount of the final settlement?
A. What I know about Mr. Casey's deficiency contract is that 30% of the difference between the proposed deficiency and the final settlement, proposed deficiency will be reduced by any amount repaid.

* * * * *

551 Q. Now let me ask you to assume, Mr. Sher. A. Right.

Q. Let me ask you this, that Mr. Casey, or any lawyer, had a contingent fee contract regarding income taxes which provided that he was to receive a contingent fee basis of 30% of the difference between the proposed, or asserted tax deficiencies, and the amount finally paid in settlement with one exception, the exception being that there were going to be certain automatic reductions in the amount of income tax claimed by the Government because it was going to be necessary to recompute the original amount claimed, to give effect to an excessive --
am I going too fast? A. Reduction with one exception?

Q. With one exception as I have stated to you. A. Yes.

552 Q. Except that any reduction in the amount claimed by the Government originally to a lesser amount resulting solely from giving the tax payer credit for certain excessive profits.

* * * * *

553 Q. I am showing you one paragraph which is the second last paragraph on the bottom of Plaintiff's Exhibit 7, the first page. and ask you to read that, to read that setting forth the question in the single exception still pending before you Sir?

MR. MILLER: Might I inquire what the witness is doing? I don't mean to be impolite.

THE WITNESS: I am trying to find out what this means and I think I got to it. 30% on the deficiency between the taxes, 30% of the difference between tax deficiencies assessed between 1943, 1945 and 1946, I don't have.

MR. MILLER: All right.

THE WITNESS: The amount finally paid in settlement of these deficiencies, except the contingency fee will not apply to reductions in the tax assessed effected as a result of that amount paid out on renegotiation.

* * * * *

BY MR. MILLER:

556 Q. Now Mr. Sher, I am asking you to assume a contingent fee agreement for 30% of the difference between the amount of the deficiency claim by the Government and the amount determined to be due by excluding the computation for excessive profits as reflected in the second last paragraph of the exhibit which I just showed you.

Upon that basis are you able to compute the amount saved by the hypothetical attorney, assuming that the original amount, the original amount claimed by the Internal Revenue Service is \$175,944.29.

Assuming further that after determination of excessive profits, recomputation to give the tax payer the benefit of the taxes paid on income that turned out not to be income, results in a revised claim thus computed by Internal Revenue of \$124,611.42.

557 Assume, do you have that down, Mr. Sher? A. The second figure?

Q. Yes. A. The second figure and I understand, if I understand your question correctly, the second figure is what the Internal Revenue assumed?

Q. As far as what the Internal Revenue claims after determination finally of the excessive profits? A. That is the final determination?

Q. Do you have that figure down? A. 124. I don't think that is the figure. I don't think that is the figure the Internal Revenue finally came about. The final figure, or the final settlement was \$97,000. I just want to correct the record with the figures, because I am not trying to be evasive.

Q. Well I know. I am asking you to assume this to be the amount originally claimed by the Government, corrected because of the fact of interest and so forth to certain dates. A. Right, right.

Q. That is \$124,611.42? A. Right.

Q. Assume further that the amount determined upon such computation is \$97,898.75. Assuming those facts what, if any, tax savings would be effected to the tax payer?

MR. BERLOW: Your Honor, I don't know whether this would save time but I stipulated in the pre-trial order that this calculation
558 was accurate. I never raised any question about it. Assuming that, I think, we might save time on that. I agreed to that. And I agree to all of the plaintiff's calculations, that they are correct. I never disputed that from the time the complaint was filed. My position is the interpretation was wrong. That is my only position.

THE COURT: What he is now doing is undertaking to cross examine the witness on his figures that he has given.

Q. (By Mr. Miller) Do you have the result there? A. I got lost there in the figures.

THE COURT: I will ask the Reporter to read what the witness said. (The Reporter read the witness' last answer).

Q. (By Mr. Miller) Mr. Sher, would you mind telling me what figures you have started with the original proposed deficiency? A. That is the only thing I have, \$175,944.29, subtracting --

Q. Yes, Sir. Assuming that is corrected to an amount claimed by the Government after computation of excessive profits of \$124,611.42. A. Right.

Q. Assume in addition, that computations shows that the amount determined, the amount of final settlement is \$97,898.80.

559 Now assuming those figures, Sir, does the taxpayer save money or lose money as far as the Internal Revenue is concerned and if so, how much? A. On this assumption, if my mathematics are correct, there is a savings of \$46,565.93.

Q. All right, would you like to recheck them? I do not think they are correct. A. I started off with \$175,944.29.

Q. Yes, Sir. A. From that I subtract \$124,611.42.

Q. Why did you do that? A. You told me that is what -- I thought you said to deduct that from that.

Q. No, Sir. What I was saying was the \$175,000 was the amount originally claimed by the Internal Revenue but that was corrected by Internal Revenue to reflect excessive profits resulting in a figure of \$124,611.42. A. If that is claimed by the Government, okay.

Q. Then what would be the savings to the tax payer? A. Well from that I subtract \$97,898.75.

THE COURT: I think before you give him the 85 --

Q. (By Mr. Miller) All right. I think we will make it 898.80.

THE WITNESS: Your Honor, do I have to answer this question?

THE COURT: I really think he is close enough.

MR. MILLER: All right.

560 THE WITNESS: No, because I never saw an estimate that said amount claimed by the Government. This is the only reason I asked.

THE COURT: You have been produced as an expert here, therefore he may like to ask you hypothetical questions, just to test you.

THE WITNESS: The effective savings would be \$26,712.62.

* * * * *

BY MR. MILLER:

561 Q. I think you testified you used Defendant's Exhibit 15, which is a computation of income tax liability after excessive profits determination? Is that right, Mr. Sher? A. Yes, Sir.

Q. Now is that exhibit your source of information in your totals on column 3 which you have denominated, Repaid as a Result of Renegotiation? A. Yes, Sir.

Q. Now is it true Sir, that -- by the way did you read more than the top page or the totals, did you go through the computation itself in that exhibit? A. I went through to see if I could prove out the repaid as a result of renegotiation, and the only thing --

MR. MILLER: Pardon me.

Q. My question is whether you looked at more than a single page which has the results, as you had on column 1 exhibit or whether you looked at all of the columns in that exhibit? A. The single page didn't have that particular figure.

Q. So you looked through all the sheets? A. Right.

Q. Well now, looking through all of the exhibits and obtaining this 1943 repayment of excessive profits, \$32,052.67 for example, the computations sheets will clearly show that credit is being given by Internal Revenue for the amount of excessive profits, doesn't it? A. It does.

562 Q. That is true of all of the figures for the years 1943, 1944 and 1945 doesn't it? A. That is right.

Q. Would that be true as to total figures? A. That is right.

Q. Isn't it a fact that those same computations were given effect by Internal Revenue as to the income tax claimed, the deficiencies? A. That is where I got this information, yes.

Q. Your answer to the question then is yes? A. Yes.

* * * * *

563 THE COURT: If you want to ask him where he got the \$3,000 or \$32,000, all right.

Q. (By Mr. Miller) Mr. Sher, where did you obtain on page 2, your figure of \$41,064.83? A. That came from Mr. Amann's figures for income taxes. It is a letter dated March 8, 1954.

Q. Yes. You have a copy of that there? I have one here. I thought you had one. That is all right.

I will show you Plaintiff's Exhibit 37 which I think is the letter you referred to, is it not, Mr. Sher? A. Yes, Sir, that is the letter.

Q. Well could you indicate where you obtained the figure of \$41,000.64 from that information?

THE COURT: It wasn't 64 cents.

MR. MILLER: Pardon me, I am sorry.

Q. (By Mr. Miller) \$41,064.83? A. The \$41,064.83 I obtained from -- I stated in the letter 1943 tax liability would be approximately \$10,280.65; 1944, \$14,823.86; 1945, \$15,960.32.

Q. You assumed those figures were correct and accurate, did you? A. I took that assumption that since Mr. Amann did it, being a tax expert, I would assume they are substantial and I mentioned they are approximately correct. I accepted it.

Q. Were they approximately correct or taken by you to be correct? A. They were not taken by me to be accurate.

564 Q. I see. \$41,064.83 is merely an approximation? A. Yes, Sir.

Q. Would you take into consideration Mr. Amann the same tax expert noted on the second page of his letter, you will understand, of course there is no guarantee that the Internal Revenue Department will accept the additional items of expense which have been allowed by the Department of Justice.

Do you recall seeing that in the letter? A. I did.

Q. But you nevertheless took those figures as such in making your calculations, you took them exactly, didn't you, Mr. Sher? A. Yes.

Q. Didn't you realize also for those figures to be accurate at all the plaintiff relied upon having the family partnership allowed?

Did you realize that or not? A. I didn't go deeply into that problem.

Q. Beg your pardon. A. I didn't go deeply into that problem.

Q. Did you go into it at all? A. I only took the -- no, I didn't go into it at all, just took the figures from the way as prepared by Mr. Amann.

565 Q. You don't know whether the family partnership, as a matter of fact, was not allowed by the Department? A. No, I really don't know.

MR. MILLER: That is all, Your Honor.

* * * * *

571 MR. BERLOW: I think I better offer them one at a time. Offer Defendant's 14.

MR. MILLER: No objection.

THE COURT: Admitted.

(Document admitted in evidence)

MR. BERLOW: And 15.

MR. MILLER: No objection.

572 THE COURT: Admitted.

(Document admitted in evidence)

* * * * *

579 EDWARD BRADY

having been previously sworn was reminded he was still under oath took the stand, was examined, and testified further as follows:

DIRECT EXAMINATION

BY MR. DICKEY:

Q. Mr. Brady, did you ever see prior to the trial in the tax court, did you ever have a visit with Mr. Anthony and Mr. Tony Paletino? A. Yes, I did.

580 Q. Whereabouts? A. I visited Tony Paletino of Providence, Rhode Island.

Q. Did you write a memo on that meeting? A. Yes, I did. I wrote a memo to Mr. Casey.

Q. I will show you a copy of the memo and see if that refreshes your recollection of the visit. A. Yes, it does.

Q. Would you describe your visit with Mr. Paletino and approximately when it occurred? A. It was early in 1955 that I visited Providence, Rhode Island, with the specific purpose of seeing whether Mr. Paletino of Colonial Knife which is one of the companies which Mr. Edell had worked for during the years 1942 to 1945.

Q. Had you previously called Mr. Paletino on the telephone?

A. Yes, I had called him some time previously to make a definite date with him.

Q. Would you describe what occurred at that meeting? Did he agree to come and testify? A. Yes, Mr. Paletino agreed to come and testify.

I spent approximately 6 hours with him. In fact I had supper at his house that night.

581 Q. On that trip or any other trip did you see any other witnesses who subsequently appeared? A. Yes, I saw Hern and Owens. I believe the companies involved were Wiley Factory and Scott & Dower and Company.

Q. Did they also agree to come and testify? A. Yes, they did.

Q. Did you see anyone else who was a potential witness? A. Yes, I saw Mr. Fincklestein of Atlantic and Mr. Casey and myself after we got a description of Mr. Fincklestein's present health decided not to ask him to come as a witness.

Q. How many witnesses appeared at the trial? A. Six witnesses altogether.

Q. Those were two -- A. Two expert witnesses and four witnesses from the companies involved.

Q. Of the four witnesses involved how many company witnesses -- how many had you previously talked to? A. I had talked to all of them but only three were willing to come and testify.

Q. Which one was not willing to testify? A. Mr. Kay.

Q. Kay? A. Right.

Q. Who secured his presence? A. Mr. Edell.

582 Q. Had you talked to Mr. Kay? A. Yes, I did.

Q. At the initial hearing in New York were any or all of these gentlemen available at that time to testify? A. Yes, they were.

Q. Did there come a time when you excused them? A. Yes, I did.

Q. When did that occur? A. Either April the 30th or May 1st.

Q. April the 30th being what day of the week? A. That was Monday of the week of the Tax Court calendar.

Q. Was there a calendar call on that? A. Yes.

Q. Then the hearing went over to the next day? A. That is correct.

Q. What occurred on April 30th that allowed you to excuse the witnesses? A. Mr. Casey was ill so I explained to Judge Heron that the illness of Mr. Casey is that he will not be able to try the case this week. The week involved. And she said Mr. Leathers of the Department of Justice had a witness from Florida and he would like to put him on the stand the following day but that was all that could be done.

Q. Subsequent to the time, to this time were the witnesses subpoenaed you are referring to? A. No, they were not.

583 Q. To appear in Washington, D. C.? A. They were subpoenaed at the trial which was postponed from New York to Washington.

Q. Did you advise Mr. Edell they should be subpoenaed? A. Yes, I did.

Q. Did he arrange to have them served with subpoenas? A. I obtained subpoenas from the Tax Court and gave them to Mr. Edell and he delivered them.

Q. Mr. Brady, I hand you the letter of March, 8 1954 addressed to Mr. Edell from Mr. Amann, which is Plaintiff's Exhibit 37, the photostat copy. Have you seen the original of that letter? A. No, I have not.

Q. Did you ever see any copy of that letter until it was exhibited here in the Court Room the other day? A. I never saw this letter until yesterday, until yesterday.

THE COURT: What is the number of the Exhibit?

MR. DICKEY: Number 37, Your Honor.

THE COURT: Plaintiff's 37?

THE DEPUTY CLERK: Yes, Ma'am.

584

Q. Mr. Brady were you in the Court Room when Mr. Edell testified? A. Yes, I was.

Q. There was some discussion or some testimony by Mr. Edell with regard to double taxation in 1945 and 1946. Did you hear that? A. Yes, I did.

Q. Did Mr. Williams, was Mr. Williams the first person to discover this so-called double taxation? A. No, he was not.

Q. What person or office was the first to discover that? A. I really couldn't say what everybody knew about.

Q. And what was done about it? A. The simple thing that was done about it, it was put in the proper year, 1946.

Q. In your settlement with the Internal Revenue for the years 1943, 1944 and 1945, was this amount ever put into those years as far as your final settlement was concerned? A. No, it was not.

Q. Mr. Brady, when did you first meet Mr. Williams in connection with this case? A. 1957 or 1958.

Q. I hand you a memorandum addressed to Mr. W. J. Casey from Mr. E. J. Brady, with the date thereon, does that refresh your recollection as to the first time you met Mr. Williams in connection with this matter? A. That is correct.

585

Q. Does this memorandum show when you first met him? A. Yes.

Q. What was the date of your memorandum? A. January the 14th, 1958.

MR. DICKEY: Nothing further of this witness on rebuttal, Your Honor.

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CROSS EXAMINATION

BY MR. BERLOW:

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Q. You went up to see these witnesses, because you knew at that time the testimony of those witnesses was very important? A. The only way we could prove Mr. Edell wasn't a 5 percenter.

Q. Did you make any notes of the testimony that they gave you at that time? A. Yes, I made --

Q. Are those written notes here? A. Yes, Sir.

Q. Did you make any notes in your own handwriting before you had them typewritten? A. They were typed from my handwriting or I dictated them. I don't know which.

* * * * *

592 Q. And these documents that you are looking at now, do they refresh your recollection that you did in fact go see those witnesses? A. Oh, yes.

Q. Now if you testified you never saw the Amann letter that Mr. Dickey just exhibited to you, until it was exhibited in court? Is that right? A. That is correct.

Q. You did see the first letter, the first Amann letter that refers to the \$138,000 as being the renegotiation tax?

You did see that? A. Which one is that?

* * * * *

593 Q. Okay. I am referring to Defendant's 1 for identification, that letter, there is not any question about that. A. Oh yes, I have seen that, yes.

Q. Now I am calling your attention to the second sentence:

"I can't however at this time give you any tax figures although I hope to be able to do so the latter part of this week."

When you read that, did you make any inquiry where the tax figures were? A. No.

Q. Did you make any inquiry of Mr. Casey? A. No.

Q. To Mr. Edell? A. No, because the tax figures weren't important until the renegotiation was settled. That wouldn't be determined.

Q. Even though Mr. Amann said he was going to determine it, it could not be determined? A. That is correct.

Q. So it was your view Mr. Amann was incorrect in saying he could do it. A. That is so.

594 Q. And Mr. Amann in writing the letter of March 8, 1954 and doing it, it is your testimony that is incorrect as well, is it not?

A. Oh yes in line with the Internal Revenue Department.

* * * * *

REDIRECT EXAMINATION

BY MR. DICKEY

Q. Mr. Brady, there has been placed in evidence Plaintiff's Exhibit 32, a letter of November 21st, 1955 to Mr. Edell.

What does that show, Sir? A. That I was up in Worcester and I saw Jack Owens and Joe Hern and they were willing to testify.

Q. Mr. Berlow asked you, I think I am paraphrasing correctly, if the letter of March 8, 1954, which is Plaintiff's exhibit 37, which you said you had not seen until yesterday if that didn't, I think change your mind or Mr. Amann made the calculation and you said it didn't, is that correct? A. That is correct.

Q. Would you explain why Sir? A. After studying the case you have to realize that the tax problem which Mr. Edell faced could not be determined until the renegotiation case was settled one way or the other.

595 And I think the Internal Revenue Service agreed with our conclusion on that matter.

Q. Were the calculations that Mr. Amann made in here, \$10,280.65 for 1943 for tax deficiency; \$14,823.86 for 1944; and \$15,960.32 for 1945, made on any assumption? A. They were made on the assumption that the same settlement and the offer of compromise of the Department of Justice could be acceptable to Internal Revenue Service.

Q. Do you know of your own knowledge whether those same expense figures were available in the Internal Revenue Service? A. They were not accepted by the Internal Revenue Service.

MR. DICKEY: I have no further questions, Your Honor.

RECROSS EXAMINATION

BY MR. BERLOW:

Q. Do you remember the fee agreement between Mr. Edell and Mr. Casey, the same assumption was made, was it not, as to the renegotiation refund? A. I have no knowledge of that.

596 Q. Was the figure of \$183,000 used in the renegotiation agreement? A. The figure of \$183,000 to my knowledge was the offer, the best offer of the Department of Justice.

Q. And didn't Mr. Casey assume that figure in the agreement he had entered into with Mr. Edell? A. I can't answer that.

Q. Did you see that figure in the agreement, \$183,000. A. What agreement are you talking about?

Q. I am talking about -- first do you remember these agreements, they were talking about five days -- \$138,000 and then \$183,000.

Do you remember those agreements? A. I remember those agreements.

Q. Now do you know the agreements we are talking about? A. No we are talking about so many agreements that I am not sure what agreement you are talking about.

Q. I am just trying to save time, I am not trying to confuse you.

But, if I have to get it out, I will. I show you Plaintiff's Exhibit 9, is the figure \$183,000 used in that agreement? A. That is correct.

Q. It was assumed was it not, that offer, that was the best offer of Mr. Prentice? Is that right? A. Of the Department of Justice, yes.

597 Q. And Mr. Amann in his letter -- let's get that back -- the first letter from Mr. Amann, could I refer to it as that letter, refers to Defendant's 1? A. Right.

Q. That also assumed Mr. Prentice's offer of \$183,000, did it not? A. Mr. Amann assumed in his letter of February the 1st that the offer of the Justice Department would be acceptable by the Internal Revenue Service.

Q. And the offer was \$183,000, was it not? A. The offer was \$183,000 for excessive profits.

Q. Now assuming, taking the same assumptions, both of Mr. Casey and Mr. Amann, which they used, and following that assumption down through, didn't Mr. Amann then calculate the income tax that was due? A. In that letter there, yes.

MR. BERLOW: I have no further questions.

THE WITNESS: On the assumption he did.

* * * * *

WILLIAM J. CASEY

having been recalled as a witness in his own behalf, and having been reminded he was still under oath, resumed the stand, was examined, and testified further as follows:

598

DIRECT EXAMINATION

BY MR. MILLER

* * * * *

Q. Did you ever or frequently discuss with Mr. Edell, as he testified, \$138,000 contract or \$138,000 tax. A. I never talked about it.

599

Q. Did you see the Amann letter referred to, estimated tax liability of \$40,000? A. I never saw it.

Q. Which is Plaintiff's Exhibit 37, prior to seeing it in Court? A. I never saw it until I saw it in Court yesterday and I haven't read it yet.

THE COURT: In this agreement which Mr. Edell said was torn up, was there any reference in that, this original agreement of the \$138,000?

THE WITNESS: There was no reference in it at all, if such an original contract or agreement existed, which I don't believe it did. The only reference was to the deficiencies and the assessment which the Government was making, for the tax deficiency and the Department of Justice offer.

I made an agreement to contest those deficiencies and I made it on a contingent fee basis, based on those figures.

Q. (By Mr. Miller) Did you ever tell Mr. Edell you could not and would not represent him until Mr. Amann had been paid and withdrawn from representation? A. Yes, I did.

THE DEPUTY CLERK: Plaintiff's Exhibit 49 and Plaintiff's Exhibit 50 marked for identification. (Documents marked for identification).

600 MR. MILLER: Your Honor, although I have Plaintiff's Exhibit 49 marked, I find it is a duplicate or a copy of Plaintiff's Exhibit 12, which is in evidence and I will withdraw 49.

THE COURT: Very well.

Q. (By Mr. Miller) When did Mr. Amann withdraw from the case thereby enabling you to start representing Mr. Edell? A. Mr. Amann called me around the 25th or 26th of July and told me he was getting out and he had settled with Mr. Edell and on the date of July 27th he sent me such papers as he had.

Q. Had he withdrawn from the case on or before July the 15th of 1954? A. No, he had not.

Q. I will hand you Plaintiff's Exhibit 4 and ask you to tell us what it says, if anything, regarding his withdrawal from the case.

A. On July the 21st, Mr. Amann addressed a letter to Mr. Edell and the last paragraph of that letter says: Offer to continue to represent you --

* * * * *

A. Our offer to continue to represent you upon the terms set forth in my letter of May 14th is hereby withdrawn. Signed by W. S. Amann.

601 That was brought to my attention around the 25th of July.

Q. Was that the first time you were informed Mr. Amann had withdrawn? Yes.

Q. I will hand you also -- A. Mr. Edell told me he made the payments that Mr. Amann demanded in this letter, and that is when I considered it settled with Mr. Amann.

Q. I will hand you Plaintiff's Exhibit 50, which is dated July 27th, 1954, being a letter from Mr. Amann to you and indicating what documents from the files were being sent to you.

I will ask you when you received them and when you received the files? A. It was dated July 27th and there is a note that my secretary made on there, received 7/28/54. I assume that to be correct.

Q. And it wasn't received by you on or before July 15th at any rate? A. No, it was not.

Q. Did Mr. Edell ever tell you he had been advised by Mr. Williams or anyone else that he owed you nothing? A. No, he did not.

602 Q. Did he ever, following a determination by the Tax Court of the renegotiation matter, inform you that he felt he didn't owe you, or wasn't going to pay you. A. He never so stated. But his actions, by his actions he did not pay me, but he never stated that he wasn't going to pay me.

Q. Was there any such conversation had with any member of your office, including Mr. Brady? A. Not to my knowledge. It was never reported to me.

Q. Did Mr. Edell ever have conversation with you after you had billed him for fees, in which he said that he didn't owe you fees in effect, and you agreed with him, and you said you had to improve on Mr. Amann's offer of \$40,000, and you said that is true?

You heard the testimony. Is that true? A. There was never any such conversation.

Q. Were your fees ever contingent upon Mr. Amann's determination of \$40,000 or any other amount? A. Mr. Amann's calculations played no part whatsoever in the agreement I made with Mr. Edell.

It was based entirely on my contesting the Government's deficiencies and the agreement was based on the amount the Government claims both on the tax case and in the renegotiation.

603 Q. After you had discussions and correspondence with Mr. Amann, after being introduced by Mr. Edell, did you have lunch with Mr. Amann and Mr. Edell? A. Yes, I did.

Q. Was that after July 15, 1954? A. It was in May of 1954 in Washington.

Q. Where did it occur in Washington? A. At the Statler Hotel.

Q. At the Mayflower Hotel? A. At the Statler Hotel.

MR. MILLER: I think that is all, Your Honor.

THE COURT: Mr. Berlow.

CROSS EXAMINATION

BY MR. BERLOW:

Q. And did there come a time after Mr. Edell got your bill for \$10,000 in the renegotiation case when he told you he would not pay that? A. No, he didn't say he would not pay it. He said, let it go until the tax thing is settled and we will settle the entire matter once and for all. And I acquiesced in the request on his part. I said okay.

Q. But in fact he did owe you that money at that time, did he not?

A. I thought he had agreed, but I wasn't going to make an issue of it.

604 The \$2500 retainer was applicable against the two amounts. I was willing to let it go until the tax matter was settled.

Q. Actually he owed you about \$7400 at that time? A. Yes.

Q. Did you subtract the retainer? A. No doubt about that.

Q. For the period of a year and a half you never made any request for him to pay that, did you? A. Yes, I was very generous with Mr. Edell.

Q. Was it generosity, or was it the fact that you did understand that if there was a loss to the client on the income tax matter that it would have to be deducted from the renegotiation matter? A. Mr. Berlow --

MR. BERLOW: Answer that question yes or no. A. That was not the understanding.

Q. That was not the understanding? A. If it wasn't generosity, it was something else. I say it was generosity.

Q. And it had nothing to do with the fact in the event you were unsuccessful? A. Nothing. I couldn't be unsuccessful. Nothing at all, because the demand -- my income tax agreement was based on the

605 Government's demand, and that demand had already been reduced. I couldn't do any worse than that. There was no possibility of being

unsuccessful in the income tax matter.

Q. Do you mean when you stipulated to the expenses in the Tax Court that that was res judicata and that -- A. No. --

Q. At the time you sent the bill in the renegotiation matter, had the deficiencies been reduced? A. No, the tax calculation had not been made at that time. But you misunderstood my previous answer.

Q. I don't understand it. A. I said there was no possibility of my holding anything on the income tax matter because my agreement was based on the deficiency which the Government had asserted. That was fixed and I can only improve on it.

Q. You couldn't lose on this? A. I was working to improve it. My conversation was based on the degree to which I was able to improve it. I couldn't lose on it.

Q. There was no risk involved at all that you would worsen the clients position? A. No, there was no risk involved.

* * * * *

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MR. BERLOW: I will withdraw the question.

Q. (By Mr. Berlow) I will ask you this, you said that the agreement with Mr. Edell on the income tax matter was based upon the deficiency proposed, is that correct? A. Yes.

Q. And did you explain to Mr. Edell at the time that the contract was entered into, that in the event any expenses were allowed in the income tax matter, that then you would be entitled to a fee representing a percentage of the taxation? A. Oh, yes. They explained that to me, that there was no expenses that had been allowed and I explained that to him.

It was understood clearly by both.

Q. Did you also explain to Mr. Edell at that time, that insofar as this renegotiation agreement was concerned, that the \$183,000 figure did contain an allowance for expenses? A. I don't know that I explained that, I think it was self-evident. Mr. Edell knew it and I knew it.

Q. Did you explain to him why the two agreements were different then in that respect, why one contained the assumption there would be some expenses deducted, and the other did not contain the same assumption? A. Because at the time I took on the case, the Government

607 was making a claim of \$183,000 on renegotiation, and was making a claim of \$175,000 on tax deficiencies, and my agreement was based on the extent to which I would be able to improve, to reduce those claims.

Q. And the assumption was that your improvement was based upon any expenses they may have excepted in income tax. That your improvement insofar as renegotiation, in that aspect there were stipulated expenses in the proposal on which that was based? A. There were many, many matters, and many, many factors that could result in the reduction of the renegotiation claim. These expenses were stipulated because I didn't think it would be possible to prove them. Therefore it was stipulated.

Q. So your contract in renegotiation pre-supposed \$64,000 in expenses and you, your contract insofar as income tax was concerned, pre-supposed zero expenses? A. That is correct, if you want to say pre-supposed.

Q. Did there come a time when you did sign an agreement with Mr. Edell on the renegotiation matter, which had as the offer the figure of \$138,000 in there? A. That was a mistake in a figure.

Q. But you signed that document? A. Yes, I did.

608 Q. And before you signed it, you read it? A. I assume so.

Q. And then you mailed it to Mr. Edell? A. Well, I forget whether he took it with him or whether I mailed it to him.

But he had a copy and I had a copy.

Q. And you took it back and called him at some later date and told him that the figures had been transposed? A. I said the figures had been transposed, yes.

* * * * *

Q. There is no question but that you did have Mr. Amann's exhibit that had the figure of \$135,580 something in it? A. Yes, that

agreement -- that estimate was among the papers I had.

Q. The \$137,000? A. Yes, that estimate was among the papers that I had.

Q. Did you at any time explain to Mr. Edell that the \$138,000 figure that you wanted changed, was within a few hundred dollars of the figure that was in Mr. Amann's agreement? A. Yes, I did. I wrote a letter telling him it was \$137,000, \$137,000 figure kicking around in the matter, and then I explained the basis on which the agreement had been arrived at and I spelled that out in my letter to Mr. Edell which I sent to him at the time I sent him the corrected agreement.

Q. By that time, of course, all of Mr. Edell's documents including all of this correspondence with Pittman and Roberts that you have introduced and all of Mr. Amann's with Mr. Edell, all that correspondence had been delivered to you? A. Such as it was, was in my office at that time. Some was in Mr. Stovall's office but I had what had been delivered, yes.

Q. With one exception that was defendant's exhibit --? A. I don't know what other exception there might have been. I can't say with one exception. I can testify that letter was not included in the papers which were sent to me.

Q. But all of the documents that have been introduced in this case there are --? A. The answer to that is yes.

* * * * *

Q. Now of course the document I was going to exclude from my question, any documents after July, the date of the receipt, which was July 27th. That was the day Mr. Amann delivered to you all of the documents that he had? Is that correct? A. That is right, yes.

Q. Now are there any documents that were dated before that time other than the one Mr. Brady says he did not see and you said you didn't see?

Are there any documents dated before that time that were not in the material, the things that were delivered to you by Mr. Amann?

A. Do you mean all those things that have been introduced here?

Q. Yes? A. As far as I know there were no other documents that I hadn't seen. That document had never been referred to in any correspondence that went on in this matter. There was no correspondence with reference to that figure in that document and I never saw it until I came to Court yesterday.

Q. Let us take the one that immediately preceded it, that is Defendant's Exhibit 1. Now Mr. Amann didn't have the original of that because that is addressed to Mr. Edell and the original of that would have been mailed to Mr. Edell, but you did have, Mr. Amann did retain
611 the carbon copy, did he not? A. I think we got this paper from Mr. Edell the first time I saw him.

Q. But Mr. Edell delivered to you the first paper having to do with renegotiation and it says there that Mr. Amann will prepare another letter on the tax matter. And did you ask Mr. Edell where it was? A. No, I didn't ask for it. I did not consider it important. It was merely Mr. Amann's calculations made on a set of hypothetical figures.

Q. And your whole contract was based on hypothetical figures? A. No, it wasn't. My whole contract was based on the deficiency asserted by the Internal Revenue Service.

Q. No, but your renegotiation -- A. That was based on an offer made by the Department of Justice. There was nothing hypothetical about it.

Q. Mr. Amann's calculations insofar as income tax was concerned were based on exactly the same offer, were they not? A. I don't know. They were based on assumptions which I considered had no validity if I were going to contest the offer. These assumptions had no validity. I knew they would disappear.

Q. And your and Mr. Edell's contract was based on that?
612 But you and Mr. Edell were contracting on the assumption that offer was in existence? A. We contracted on the basis of my being

able to improve that offer and that is why Mr. Edell retained me.

Q. That is right. As a matter of fact, both you and Mr. Edell signed that agreement and for all you know the Department of Justice may have rejected it right then? It may have been withdrawn? A. I still considered it was the best offer that had been made to Mr. Edell, and I undertook to work out a settlement either in Court or otherwise, which would be better than that offer.

Q. That is what Mr. Edell had in mind too was it not? A. I believe he did.

Q. But your testimony is thus far that he had that in mind only insofar as the renegotiation was concerned but not insofar as the income tax was concerned? A. No, sir. There was no offer of settlement. No adjustment on the income tax. All we had was the deficiency asserted by the Internal Revenue Service which pre-supposed no expense at all. I believe that to be the case. I am not sure.

MR. BERLOW: I have no further questions, Your Honor, please.

MR. MILLER: I will offer in evidence Plaintiff's Exhibit 50 for identification.

613 That is all, Mr. Casey.

THE WITNESS: Thank you. (Whereupon the witness withdrew from the witness stand and resumed his seat in the court room.)

THE COURT: Plaintiff's Exhibit 50 for Identification is admitted in evidence.

(Document admitted in evidence.)

(The Court recessed at 5:15 until 10:00 the following morning.)

* * * * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE
U.S. TAX COURT, May 1, 1956

16 contracts with the clients, and in addition to that eight and a half million dollars to which it was compensated, it handled another million and a half dollars, another twenty per cent worth of determination settlements in which it rendered services and sustained expense in winding up business which it had developed and initiated and for which it received no compensation at all because under its contracts with its clients it was entitled to no compensation except as, if and when delivery of goods was finally made and accepted.

You see no compensation on sales and on these terminated contracts. It had rendered the service of giving these companies ought to be able to handle contracts, services, execution of the contracts. Then because it was terminated and no deliveries were made except termination payments, it became entitled to no compensation payments but nevertheless it did handle business and assist its clients in working through the somewhat complicated business of determining the business awards and closing up its war business.

That, Your Honor, is what we expect the evidence to sustain and in light of which we would like to have the court review and evaluate the evidence.

THE COURT: Going back to the supplementary stipulation, Mr. Leathers, I am going to ask you to try to recall something about our decisions in the renegotiation cases. As you know, we are not hearing many of these cases now and have not been for two or three
17 years, although we still have a desk file of one hundred of these cases pending in the court. The statutory notices with which we deal in the renegotiation cases are different than the statutory notices that give rise to the Federal tax precedents in this court. I must go into the specific things with you while you are here because

they take up time later, and they are rather formal matters which counsel should take care of for the court anyway. It saves the time in the long run if we find out some of these things which would have to be contended to later.

Now if the court should sustain the Respondent on the first issue and hold that the partnership was a subcontractor, then we would have to go into the matter of the kind of decision to be entered if we also held that some of the profits in each of the three years were excessive. Well, don't we enter a separate decision for each year?

MR. LEATHERS: Yes.

THE COURT: Don't we say for the year 1943 the Petitioner realized excessive profits in a certain amount?

MR. LEATHERS: Yes, I think that is correct, Your Honor.

THE COURT: How would I handle a total sum such as you have in Paragraph 1, that the court may enter determination for excessive profits totalling \$240,000? That would be for three years, would it not?

EXCERPTS FROM U.S. TAX COURT REPORTS

601

HARRY EDELL and LEWIS H. EDELL, a Copartnership,
Doing Business as HARRY EDELL, Petitioner, v.
UNITED STATES OF AMERICA, Respondent.

Docket No. 882-R. Filed June 10, 1957.

1. Held, (a) that contracts between petitioner and each of its several principals provided that petitioner would sell or attempt to sell products of a principal to a department of the Government, and would solicit, attempt to procure, and procure Government contracts for a principal; and (b) that under each of such contracts petitioner's compensation for its services was contingent upon the procurement of a Government contract; and that, therefore, (c) each of the contracts between petitioner and its principals was a subcontract within the provisions of section 403 (a) (5) (b) (i) and (ii) of the Renegotiation Act of 1942, as amended, and the commissions received by petitioner under each of such contracts are subject to renegotiation.

2. The amount of excessive profits for each of the years 1943, 1944, and 1945 is determined.

William J. Casey, Esq., and Edward J. Brady, Esq., for the petitioner.

Harland F. Leathers, Esq., and James H. Prentice, Esq., for the respondent.

The respondent determined by orders dated June 9, 1949, that the petitioner realized excessive profits for the years 1943, 1944, and 1945, derived from contracts and subcontracts subject to renegotiation in the amounts of \$25,735, \$85,541, and \$170,377, respectively, or a total of \$281,653 for the 3 years. Respondent now claims that petitioner realized excessive profits for the years 1943, 1944, and 1945, in the amounts of \$36,000, \$84,000, and \$120,000, or a total of \$240,000 for the 3 years.

Petitioner has abandoned some of the issues presented by the pleadings. The issues remaining for decision are: (1) Whether

petitioner, during the years 1943, 1944, and 1945, was a party to any
602 subcontracts as defined by section 403 (a) (5) (B) of the
Renegotiation Act of 1942, as amended, so as to make its profits under
such arrangements subject to renegotiation. (2) If any of the earnings
of petitioner for any of the years involved are subject to renegotiation,
what amount of such earnings constituted excessive profits, if any.

FINDINGS OF FACT

On December 22, 1942, Harry Edell and his brother, Lewis Edell, formed a partnership, hereinafter called the partnership, under a written agreement, which began business on January 1, 1943, and had an office in New York City. At that time, Harry Edell lived in New York City and Lewis Edell lived in Brooklyn. The terms of the partnership agreement and other facts relating to the partnership are set forth hereinafter. Harry Edell was the more active member of the partnership and its formation was his idea. He is referred to hereinafter as Edell.

Prior to 1942, Harry Edell was engaged in various pursuits, as follows:

For 2 years prior to 1918, he was a field manager for the General Petroleum Company of Texas, which was partly owned by members of his family. In 1918, he went to New York City where he was associated with a hat factory as assistant manager, and later as general manager, until 1920 when the business was dissolved. He then became factory manager of the Botany Straw Works in New York City until that business was dissolved in 1923. For the next 10 years, he was part owner, vice president, and general manager of the Herbel Hat Company until it was dissolved in 1934. Thereafter, until sometime in 1936, he was in the business of manufacturing women's hats under the name of the Harry Edell Company. From sometime in 1936 until about 1937, he was employed by the Ferber Millinery Company, for whom he arranged the leases of millinery departments in department stores in various parts of the country. In 1937, he went into the

millinery manufacturing business with another, doing business under the name of the Crickett-Rudley Corporation. On January 31, 1938, Harry Edell was adjudged bankrupt, on his own petition. He was discharged from bankruptcy on November 22, 1938. The trustee in bankruptcy filed a return of no assets, and the case was closed on June 17, 1940. In 1939, he suffered a nervous breakdown, and he was inactive until 1942, during which time he used the proceeds of some health insurance policies for his support.

On his income tax return for 1938, Harry Edell reported gross income in the amount of \$5,150, which represented his salary from the Ferber Millinery Company.

603 Harry Edell was not an engineer; he had no technical training; he had no formal education beyond high school except for incidental courses in public speaking and some other subjects.

Early in 1942, Harry Edell was able to resume business activities. In an effort to help Edell develop some new business pursuits, two friends took him to the Philadelphia Quartermaster Depot to acquaint him with Government facilities which had been established to help manufacturers to enter war production. Also, they introduced him to Lawrence Dodge of the Dodge Textile Company in Providence, Rhode Island.

Edell entered into a contract with Dodge in early 1942, whereby Edell was to perform certain services for Dodge which are described hereinafter. Edell performed services for Dodge under this contract during 1942.

On March 30, 1942, Edell entered into an agreement with the Atlantic Knitting Company, Inc., of Providence, Rhode Island, hereinafter called Atlantic Knitting. The terms of this agreement are set forth hereinafter. Edell performed services for Atlantic Knitting during 1942.

Also, in 1942, Edell entered into an agreement with the Supply Manufacturing Company, New York, New York, hereinafter called Supply, the terms of which are set forth hereinafter. Edell performed services during 1942 under this contract.

During 1942, Edell received payments from Dodge, Atlantic Knitting, and Supply, in the total amount of \$16,321.78 which were reported in his income tax return for 1942, as follows:

Dodge Textile Company - - - - -	\$10,981.88
Atlantic Knitting Company - - - - -	3,400.00
Supply Manufacturing Company - - - - -	<u>1,939.90</u>
Total - - - - -	16,321.78
Expenses - - - - -	<u>8,500.00</u>
Net income - - - - -	7,821.78

When Edell and his brother created a partnership on December 22, 1942, Edell assigned his contracts with Dodge, Atlantic Knitting, and Supply, to the partnership; he did not contribute any cash to the capital of the partnership. Lewis Edell loaned \$5,000 to the partnership. This amount constituted the capital of the partnership.

In 1942 and thereafter, during 1943, 1944, and 1945, Lewis Edell, hereinafter called Lewis, was employed as a sales agent for several sportswear manufacturing concerns. In his income tax returns for 1941 and 1942, he reported gross income in the amounts of \$1,960 and \$1,100 respectively. Lewis died in 1949. According, there is no testimony of Lewis in the record of this case.

604 The material parts of the Edell partnership agreement dated December 22, 1942, which was executed by Harry and Lewis Edell, are as follows:

Whereas, Harry has for some time past been in the business of representing manufacturers in negotiations for contracts with United States Government and Departments thereof, and assisting said manufacturers in performing said contracts, and

Whereas, Harry is in need of assistance to conduct and enlarge said business and is also in need of additional finance for the same, and

Whereas, it is the desire of both parties to form a partnership to carry on the business formerly conducted by Harry:

Now Therefore, It is Mutually Agreed as Follows:

FIRST: That the parties hereto shall, as partners, engage in the business of representing manufacturers and suppliers of merchandise in the preparation of invitations and negotiations for contracts between said manufacturers and suppliers and the United States Government and departments thereof and for its allies, and assisting said manufacturers in performing said contracts.

SECOND: That the partnership shall continue doing business under the name of Harry Edell and the office or place for which said business shall be conducted shall be at 66 Leonard Street, Borough of Manhattan, City of New York.

THIRD: Harry hereby assigns to the partnership, the following written contracts which were heretofore made with him personally:

1. Supply Manufacturing Co. Inc. - 34 University Place, N.Y., dated May 11th, 1942;

2. Atlantic Knitting Company, Inc. - 75 Eagle Street, Providence, Rhode Island, dated March 30th, 1942;

3. One-half interest in agreement made with L.M.R.V. Corp. - 48 East 21st St., N.Y. dated December 3rd. 1942.

All contracts to be obtained in the future for convenience shall be made out in the name of Harry Edell individually.

However, it is understood and agreed that the said Harry Edell upon obtaining said contract shall be acting as the agent of the partnership, and the said contracts shall enure to the benefit of the partnership immediately upon the procurement thereof by Harry.

FOURTH: That Lewis shall contribute to the partnership the sum of \$5,000.00 in cash, which shall be used by the partnership for the promotion of the business, which sum however shall be considered a loan to the partnership, and shall be repaid to Lewis as hereinafter provided in Paragraph Eighth herein.

FIFTH: That all checks, notes, cash or monies to be received by the partnership, shall be received in the name of Harry Edell individually and the same shall be held by him on behalf of the partnership. That the said monies shall be kept by said Harry Edell, separate and apart from any of his personal funds until the distribution thereof as hereinafter provided. That in the event the partners decide to open a bank account, the same shall be opened in the name of Harry Edell, but all funds deposited therein shall be considered the funds of the partnership and the said Harry shall act as trustee thereof on behalf of the partnership.

* * * * *

SEVENTH: (a) That full and accurate accounts of the transactions of the partnership shall be kept in proper books; and each party shall cause to be entered into the said partnership books, a full and accurate account of all his transactions in behalf of the partnership;

605 (b) That the books of the partnership shall be kept at the place of business of the partnership, and each party shall, at all times, have access to and may inspect and copy any of them.

EIGHTH: That the profits and losses shall be divided as follows:

(a) As soon as there are sufficient profits in the partnership funds, after the deduction of all expenses of the business, the \$5,000.00 loan made by Lewis shall be repaid to him.

(b) After deduction of all expenses incurred in the operation of the business and the repayment of the \$5,000.00 loan to Lewis, the first \$10,000.00 in profits shall be paid to Harry.

(c) After the aforementioned payments, all net profits or net losses shall be divided equally between the parties hereto and the account of each shall be credited or debited as the case may be for his proportionate share thereof.

(d) Division of profits or apportionment of losses shall be made periodically upon mutual agreement of the parties.

NINTH: That the term of the partnership shall begin on the 1st day of January 1943, and shall terminate six months after the war is ended.

TENTH: That, at the termination of this partnership by the expiration of its term, or by reason of any other causes, the assets, liabilities and income, both gross and net, shall be ascertained, the debts of the partnership shall be discharged, all remaining assets shall be reduced to cash, and this cash shall be distributed to the partners in accordance with their respective capital accounts.

During the years involved, 1943-1945, and also during 1946, practically all of the work done for the Edell partnership was performed by Harry Edell; Lewis' services were minor, if not negligible.

At the end of 1942, Harry Edell was in contact with four corset manufacturing companies which wished to enter war production. Edell suggested that the four companies organize a fifth company, to be known as the L.M.R.V. Corporation, with a separate factory to be devoted to production of goods and materials for the Government, i.e., having a war-end use, and that each of the existing four companies contribute a nucleus of machinery and labor to the new company. The suggestion was carried out. Edell then entered into a contract with L.M.R.V., which is referred to hereinafter. Edell received no compensation from L.M.R.V. in 1942.

During either 1943, or 1944, or 1945, Edell, for the partnership, made arrangements with other corporations. Accordingly, services were performed for the following corporations during 1943-1945, and Edell received payments from each corporation, all of which are involved under the issues presented:

1. Dodge Textile Company	Providence, Rhode Island
2. Atlantic Knitting Company	Providence, Rhode Island
3. Supply Manufacturing Company	New York, New York
4. L.M.R.V. Company	New York, New York
5. Artex-Green Corporation	Long Island, New York
6. Colonial Knife Company	Providence, Rhode Island
7. Wiley-Bickford-Sweet Company	Worcester, Massachusetts
8. Brewer & Company	Worcester, Massachusetts

606 Some services were performed for an additional concern, William Glucken & Company, in New York City, but the parties are agreed that compensation received by petitioner from this corporation represents income which is not subject to renegotiation.

For the years 1943, 1944, and 1945, the partnership filed Federal partnership returns, on a cash basis, in which were reported the amounts received by the partnership from various ones of the companies listed above, as follows:

<u>Year</u>	<u>Gross receipts</u>
1943 - - - - -	\$59,392.54
1944 - - - - -	142,546.08
1945 - - - - -	<u>161,539.91</u>
Total - - - - -	363,478.53

In addition, petitioner received, after 1945, from various ones of the companies listed above, amounts aggregating \$65,000, less expense of \$30,000, or a net amount of \$35,000, which sum was attributable to services rendered during the years 1943-1945, inclusive.

During the years in question, the partnership had only one employee, Harry Edell's wife, who acted as his secretary. She received a salary of \$4,000 per year.

Reference had been made above to the fact that in 1942, Edell entered into agreements with Dodge, Atlantic Knitting, and Supply, which were assigned to the Edell partnership, and to the fact that after 1942, the partnership, through Edell, entered into agreements with five other corporations, namely, L.M.R.V., Artex-Green Corporation, Colonial Knife Company, Wiley-Bickford-Sweet Company, and Brewer & Company. Before setting forth the terms of the agreements with each one of the eight corporations, it is appropriate to state, in general and briefly, what the peacetime business of each company was.

Prior to entering into agreements with Edell or the partnership, none of the eight companies listed above had obtained any contracts for production of goods having a war-end use, except that Colonial Knife had produced incendiary fuses under a subcontract, but this subcontract proved to be unprofitable, because Colonial Knife was not properly equipped for producing incendiary fuses. The prewar business of each of the eight companies was as follows: Dodge manufactured women's housedresses; Atlantic Knitting produced knitted cloth for the ladies' garment trade; Supply serviced shoe manufacturers by cutting leather into strips; L.M.R.V. was a new company formed by four corset manufacturing concerns; Artex-Green manufactured venetian blinds; Colonial Knife manufactured small jackknives and metal novelties; Wiley-Bickford manufactured ladies' slippers; and Brewer manufactured pharmaceuticals, candy, and abdominal belts.

607 The record does not show how Edell originally made contact with each of the eight companies, but it appears that initially he contacted some of them, and that some of them initially contacted him. Prior to entering into agreements with Edell or the partnership, all of the companies were desirous of obtaining contracts for production

of goods having a war-end use, because they could not obtain Government priorities for the materials and labor which they required to remain in full production, unless they were engaged in the production of products for the Government. Some of the companies had tried to obtain Government contracts, but their efforts had been unsuccessful. Prior to making contracts with petitioner, the corporations involved here apparently had not acquired the experience or the assurance to deal directly with representatives of the Government for the purpose of obtaining Government contracts. They were small business concerns and they were faced with the necessity of converting their plants so as to produce other products, as well as with the problem of obtaining materials. The services which Edell offered the companies included obtaining information from Government representatives, preparing bids, and carrying on dealings on their behalf, as their representative. The companies entered into agreements with petitioner through Edell because they believed that he could obtain Government contracts for them.

As has been noted above, three of the agreements under which payments were made to the partnership, those with Dodge, Atlantic Knitting, and Supply, were made by Edell in 1942. The partnership performed services for these three corporations; it appears that it received payments from these three corporations in 1943 only, and not in 1944 or 1945. The partnership entered into agreements with L.M.R.V., Artex-Green, Wiley-Bickford, and Brewer during 1943, and performed services for these four corporations. It appears that the partnership received payments from these four companies during 1943, 1944, and 1945. The partnership entered into an agreement with Colonial Knife in 1943. It appears that it performed services for and received payments from that corporation during 1944 and 1945.^{1/}

^{1/} Exhibit D, attached to the petition, lists the corporations from which the partnership received payments in each of the years 1943-1945, inclusive. The partnership was unable to produce its books and records during the trial of this case. Harry Edell testified about many matters from memory. Therefore the record is not exact about some details such as all of the years in which payments were received.

Each of the eight corporations, listed above, which entered into agreements with Edell, for the partnership, converted its plant to enable it to produce goods desired by agencies of the Government, and each received contracts from the Government under which goods were produced. Under such Government contracts, the corporation

608 made articles and goods as follows: Dodge converted its plant to make and made mattress covers, pillow cases, butchers' aprons, bandoleers, and insect bars. Atlantic made knitted cloth for linings of Army overcoats, for gloves, and for blankets. Supply made dufflebags, medical kits, and a machine kit. L.M.R.V. made mattress covers and sailor hats. Artex made mattress covers, dufflebags, and a non-inflammable wastepaper basket for use in houses built for Navy Yard workers. Colonial made a giant jackknife which was used by the Air Corps and was part of the equipment in the so-called Knutson Vest, and a hunting knife which was used by the Navy. Wiley-Bickford-Sweet made parkas, jungle hammocks, sleeping bags, clothing bags, life preservers, and insect bars. Brewer & Company made abdominal belts, antibiotics, multiple-vitamin capsules, and hard candies.

Under each agreement with each of the eight companies, the partnership was to be paid, and was in fact paid, commissions varying from 2 1/2 per cent to 5 per cent of the amounts of sales by the companies to the Government under Government contracts and subcontracts. A letter from Colonial Knife to Edell dated January 25, 1943, stating the terms of its understanding with the partnership, contained the following provisions: "Your compensation for all of these services will be an amount equal to 5% of the deliveries made on orders received by us from the governmental agencies." A memorandum of agreement between the partnership and each of the other companies contained a substantially similiar provision. Under each agreement, the partnership was not to receive payment of any amount unless Government contracts or subcontracts were awarded to the company; the amounts payable to the partnership under the agreements were

dependent upon the amount of such Government contracts and sub-contracts.

Some of the agreements provided for advances to be paid to the partnership, but only Wiley-Bickford and Brewer in fact paid the partnership any advances. Wiley-Bickford paid advances to the partnership in the amount of \$50 per week throughout 1943-1945, inclusive, and Brewer paid advances in the amount of \$50 to the partnership from time to time during 1943 and 1944. However, the total amounts which the partnership received from Wiley-Bickford and Brewer were determined on the basis of a fixed percentage of the payments received by Wiley-Bickford and Brewer from the Government.

Except for the advances referred to above, the partnership did not receive any payments from any of the eight companies until after Government contracts had been awarded to the companies and deliveries had been made to and accepted by the Government and payment had been received by a company from the Government. Each company then paid the partnership a fixed percentage of the payments it had received from the Government.

609 Commissions were paid to the petitioner on all sales made by its principals to the Government, whether the petitioner actually procured the sales contracts or not.

Under all of its agreements with the eight companies, the petitioner was not reimbursed for any traveling or other expenses.

Each agreement which the partnership made with the eight companies provided that Edell was to render a variety of services to the companies, such as: To secure comparative information of previous bids submitted to the Government by competitors for similar products; to endeavor to secure special priorities when needed; to assist in the preparation of material needed for the negotiation, or renegotiation, of contracts with the Government, and the termination thereof; to assist in research and development of products requested by or suitable for Government agencies; to service all orders which the

companies might secure from Government agencies; to assist in preparing and securing technical analyses of costs; to assist in locating sources of supplies for both materials and packages and in securing the same; to assist in securing reinspection, laboratory tests, and disposal of any materials furnished which might be rejected for any reason; and to expedite payment of invoices submitted. Edell was given the right to represent the companies in various Government agencies, and in the case of some of the companies, in all Government agencies.

Edell, acting for petitioner, procured at least one Government contract, or subcontract, for each of the eight companies listed above. He carried on a number of activities in soliciting and procuring such contracts, acting as a representative of the companies. He advised his principals of the products the Government wanted. His activities led to the issuance of invitations to his principals to bid on Government contracts. He also negotiated the terms of contracts between his principals and Government agencies.

Examples of Edell's activities on behalf of each of the eight clients of petitioner are as follows: On November 10, 1942, Edell wrote to Navy Ordnance, on behalf of Supply, in part, as follows:

Enclosed please find break-down of our costs for manufacturing of Poncho Type 2.

We are desirous of negotiating this contract with you and feel you might be interested in its actual cost.

On July 5, 1942, Edell wrote to Dodge, in part, as follows:

This confirms my telephone report to you of my negotiations held yesterday July 4th, with the Navy officials, regarding your bid for Neg 4446 (Mattress Covers).

610

On July 19, 1942, Edell wrote to Dodge, in part, as follows:

As per my telephone conversation with you from Philadelphia yesterday (July 18th), please be advised that Frankford Arsenal through Mr. Van Dyke, authorized me to have you manufacture 100,000 additional bandoleers.

On October 6, 1942, Edell wrote to Dodge, in part, as follows:

Also relative to our previous conversation, please advise me if you are ready to accept an increase in your bandoleer production, as arrangements for this additional award has been made by me. As I mentioned to you last Saturday, it is important that you accept this business immediately. [Emphasis added.]

On October 30, 1942, Edell wrote to Dodge, in part, as follows:

There also might be a possibility of my negotiating an award for you prior to November 18th, if you advise me of your desires at once.

On October 30, 1942, Edell wrote to Dodge, in part, as follows:

Philadelphia Quarter Master Depot are interested in securing bids on 425,000 Aprons, B., B & C W/BiB same as you are making for them at present. Bids must be presented before November 18, 1942.

On November 6, 1942, Edell wrote to Dodge, in part, as follows:

Please be advised that the Navy is interested in securing bids on 3,000,000 mattress covers, Type A. Bids must be returned by November 17th. Manufacturer must provide all materials.

On May 26, 1943, Edell wrote to Ravenna Ordnance Plant, on behalf of Dodge, in part, as follows:

We are manufacturing bandoleers of the N 1 and M 1906 type for the Frankford Arsenal. Would you kindly advise us if we can serve you also in the like fashion.

On August 7, 1943, Edell wrote to the Jeffersonville Quartermaster Depot, on behalf of Artex-Green, in part, as follows:

Will you kindly place us on your list of invitations to bid on the following items:

On October 6, 1943, Artex-Green wrote to Edell, in part, as follows:

I mention this because it is my understanding on your next Washington trip, you might solicit some further business.

On January 5, 1943, Edell wrote to Atlantic, in part, as follows:

You are postively going to get an order from the Philadelphia Quarter Master for the:

On September 18, 1943, Edell wrote to Atlantic, in part, as follows:

I spent two days in Philadelphia trying to get the Philadelphia Quarter Master to take your overage of 20 ounce cloth.

On November 16, 1944, Edell wrote to the Navy Department, on behalf of Atlantic, in part, as follows:

Would you kindly advise us if you have any requirements which could utilize 45 pieces of 20 ounce O.D. Knitted Cloth, approximately 54 to 55 inches in width. This cloth was manufactured for us, beyond our contractual yardage requirements for the Philadelphia Quartermaster Depot, and is as per specification.

611 On August 7, 1943, Edell wrote to Wright Field Material Division, on behalf of L.M.R.V., in part, as follows:

We are interested in bidding on the following items, and would appreciate receiving invitations from you for them:

On January 17, 1951, L.M.R.V. addressed a letter "To Whom it may concern," in part, as follows:

This is to advise that Mr. Harry Edell was employed by us to help in obtaining orders from government agencies.

On January 31, 1943, Edell wrote to Brewer, in part, as follows:

In the meantime the Overseas Department are interested in securing our quotation on lemon drops and fruit balls of various flavors, all of course to be made of hard texture.

On January 31, 1943, Edell wrote to Brewer, in part, as follows:

If advisable, I would like someone who is familiar with the manufacturing of this candy to meet me in New York so that we can arrange an appointment and discuss with the contractual offices.

On September 2, 1943, Edell wrote to the St. Louis Medical Depot, on behalf of Brewer, in part, as follows:

Will you kindly place us on your list of invitations for all forms of tablets and ampules, particularly --

[List of items omitted.]

We are also manufacturers of all types of Surgical Wearing Appliances and Elastic Bands, Stockings, etc., which we would like to bid on also.

On April 2, 1946, Edell wrote to Brewer, in part, as follows:

It must be very obvious to you that the securing of these contracts, plus all my servicing, entailed considerable time and expense, and since the government permits us a profit on the different manufacturing stages of these terminated awards, I am entitled to my proportionate share of the same. [Emphasis added.]

On June 11, 1943, Edell wrote to Wiley-Bickford, in part, as follows:

Inasmuch as the U.S. Government wish 37,000,000 of this item, it may be possible that if you put in a successful bid for a large quantity, you could use the facilities of both these factories.

On June 11, 1943, Edell wrote to the Philadelphia Navy Yard, on behalf of Wiley-Bickford, in part, as follows:

We are thoroughly familiar with the manufacturing of such items as the following and would be grateful if you would place us on your list of invitations to bid for same:

On June 12, 1943, Edell wrote to Wiley-Bickford, in part, as follows:

Please be advised that the Boston Quartermaster are interested in securing a large quantity of insoles, felt for Ski Boots. I am enclosing the specification for same and would appreciate your telephoning the Boston Quartermaster office, asking them for an invitation.

612 On July 5, 1943, Edell wrote to Wiley-Bickford, in part, as follows:

I have just completed arrangements subject to the last man's signature for us to manufacture 30,000 preserver Knapsacks at \$4.75 net F.O.B. factory.

On July 14, 1943, Edell wrote to Wiley Bickford, in part, as follows:

As we have been successful in obtaining the additional contract, due to your efforts, we naturally are very much concerned in the completion of this contract on time.

On April 27, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

I have not gone beyond the above points in our negotiations as I am at a loss to arrive at a final price decision, without your assistance, but I would like to emphasize that you come here as quick as possible while this matter is still of interest to them.

On May 3, 1944, Edell wrote to the Philadelphia Navy Yard, on behalf of Wiley-Bickford, in part, as follows:

This will confirm my conversation and offer of yesterday's date with you at the Philadelphia Navy Yard.

We will manufacture for you sixty thousand (60,000) Jacket type Preservers, under the terms and conditions as follows:

On June 1, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

I have completed negotiations with the U.S. Navy to manufacture:

Minimum of - - - - - 50,000 Preserver-Life Jacket Type at \$4.85 net f.o.b. factory.

On June 1, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

I have completed negotiations with the U.S. Navy to manufacture:

On a letter from Wiley-Bickford, to Edell, dated June 13, 1944, Edell made a handwritten notation, as follows:

Arranged supplemental order to take care of balance in visit to P.Q.M. Dept. HEdell

On August 3, 1944, Edell wrote to the Philadelphia Quartermaster Depot, on behalf of Wiley-Bickford, in part, as follows:

The attached bid is submitted to you with the understanding that we will have the privilege of discussing any award contemplated for us before its closing.

On August 8, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

This will confirm my telephone conversation with you of yesterday's date. Please be advised that I renegotiated our life preserver contract with the U.S. Navy officials and we are to receive 50,000 units at \$4.70 each f.o.b. factory, plus whatever extra charges will be added to this price for the changes in the new blueprints.

On August 18, 1944, Edell wrote to Wiley-Bickford, in part, as follows:

This will confirm the fact that I negotiated a contract for us for the JACKET LIFE PRESERVER as per the new blue-prints, as follows:

613 On January 23, 1945, Edell wrote to the Philadelphia Quartermaster Depot, on behalf of Wiley-Bickford, in part, as follows:

Confirming conference held today with Mr. Harry Edell we hereby offer to make 32,000 Bags, Clothing, Waterproof, conforming to specification PQD 229D dated 5 May 1944 with exceptions as noted in NEG 36-030-45-NEG-230 at a price of \$1.56 1/2 as had.

On March 15, 1945, Edell wrote to Wiley-Bickford, in part, as follows:

Confirming my telephone conversation with you today, please be advised that we will receive an official award by mail next week, the contents of which will be as follows:

On April 14, 1944, Edell wrote to the Philadelphia Navy Yard, in part, as follows:

Therefore, we respectfully submit the following proposal to you in order that this continuity of production may be maintained:

Beginning July 1st, 1944, we will deliver 10,000 Jacket Type Life Preservers as per present specifications - monthly - until the end of the year. Total 60,00 [sic] Units at \$5.05 each - f.o.b. factory.

On January 29, 1943, Edell wrote to Colonial, in part, as follows:

I spoke to General B.O. Lewis of the Boston Ordnance, by long distance this morning, and he was very much interested in seeing that we receive the work which we want on the Trench Knife M-3.

On January 29, 1943, Edell wrote to Colonial Knife, in part, as follows:

Do not waste any time because I am sure we can get the business either from the Small War Plants or the Boston Ordnance Department, both of whom have some business to issue on the item.

On April 17, 1943, Edell wrote to Colonial, in part, as follows:

I have conferred with the procurement offices here at Wright Field about the hunting knife and have left one with them inclosed in the sheath.

On June 8, 1943, Colonial wrote to Edell, in part, as follows:

If you ever have the opportunity to quote on this knife, you can offer it at the above price.

On October 19, 1943, Edell wrote to Army Ordnance, in part, as follows:

Mr. Antonio Paolantonio and myself dropped into your office last Friday for the purpose of showing you personally, a sample of the M-3 Knife which we manufacture, as per your specifications.

On December 21, 1943, Edell wrote to Colonial Knife, in part, as follows:

please be advised that I have succeeded in securing for you the following contract:

50,000 knives at \$68 each
Contract No. NX-44755

614 On January 17, 1944, Edell wrote to the Jersey City Quartermaster Depot, on behalf of Colonial Knife, in part, as follows:

Confirming my telephone conversation with you, please be advised that we would greatly appreciate receiving invitations

from you to bid on Hunting Knives and Combat Utility Knives. We are making these at present for the Navy and Marine Corps. We can also manufacture the M-3 Army Ordnance Knife and certain kinds of Scout Knives.

On January 17, 1944, Edell wrote to Colonial Knife, in part, as follows:

Please permit me to call your attention to the fact that there is a considerable amount of government business to be secured on two, three, and four bladed scout knives. The Jersey City Quartermaster and the Post Exchange both requested them from me within the last few days.

On November 9, 1944, Edell wrote to the Navy Department, on behalf of Colonial Knife, in part, as follows:

We would quote you on the basis of large procurement, that is, an initial procurement of approximately 50,000 of these knives as follows:

On July 19, 1945, Edell wrote to the U. S. Aviation Supply Office in Philadelphia, on behalf of Colonial Knife, in part, as follows:

I would greatly appreciate hearing from you as to whether you have found it possible to increase the present award of 100,000 Jiant Jack Knives, or the introduction of a new order.

On August 7, 1945, Edell wrote to the U. S. Marine Corps, Washington, D.C., on behalf of Colonial Knife, in part, as follows:

As per conference with our Mr. Edell we are sending to you under separate cover via parcel post 12 of our Jiant Jack Knives.

On June 13, 1944, Edell wrote to a Government contractor, in an effort to obtain a subcontract for one of the partnership's clients, in part, as follows:

The original contracts for the Hoods and Bags were secured by me and manufactured during 1943 by Supply Manufacturing Company and the groundwork for the Sleeping Bag invitation was arranged by me during 1943.

In soliciting and procuring Government contracts for a company, Edell proceeded, in general, as follows: He went through the company's plant: he obtained a list of its machinery and equipment; he took the list to various Government procurement departments or depots; he obtained the opinion of technical personnel in a department as to what products to be purchased by the department could be manufactured with the client's equipment, and what additional equipment the client would have to acquire in order to manufacture such products; he conveyed this information to the client; he obtained specifications and samples of products which Government procurement offices wanted to purchase and brought these back to the client.

615 Edell obtained information for the companies, from Government procurement offices, as to contracts on which invitations to bid were going to be issued, and he requested that the companies be invited to bid on such contracts. If the Government agency required that a company's plant be inspected and approved before it was invited to bid, Edell arranged for such inspection and approval. He obtained information from the Government, and from other manufacturers, as to prices at which contracts had been previously awarded, and also cost and technical data, for the use of the companies in preparing their bids. He often also assisted and advised in the preparation of bids. He contacted Government procurement offices to stimulate interest in his principals' products, and he secured promises of the award of contracts.

A considerable portion of Edell's time was spent in servicing contracts given to his principals by various Government agencies. Edell arranged for executives and employees of his principals to study the operations of other companies producing the same items; he obtained priorities for materials and labor; he located sources of materials

and machinery required by his principals; and he expedited payments by the Government to his principals.

Neither Harry nor Lewis Edell was a bona fide executive officer, partner, or full-time employee of any of the eight corporations.

The partnership contributed to the efficiency of the eight companies by obtaining contracts and materials which kept their equipment and labor operating at full capacity.

Petitioner assumed no substantial risks. Even though it was never certain that any particular contract which Edell sought to obtain for one of his principals would be awarded, when contracts were awarded, the principals were bound to complete the contracts, and petitioner then received return for its costs and efforts in obtaining the contracts. Petitioner made no significant inventive or developmental contribution to the war effort.

Petitioner made a significant contribution to the war effort in obtaining technical assistance and information for its clients.

Petitioner's business was one of performing services; it was not a manufacturing business.

The parties have entered into stipulations from which there is agreement upon the following facts:

The partnership received commissions from nonrenegotiable business aggregating \$56,478.53 which is attributable to the years 1943-1945.

For each of the years 1943, 1944, and 1945, the partnership's expenses amounted to \$14,000 per year, including the salary paid to Edell's wife, or \$42,000 for the 3 years.

616 The partnership received net income, after expenses, of \$35,000, after 1945 which was for commissions attributable to services performed by the partnership during the years 1943-1945, inclusive, for the eight corporations involved.

Exclusive of commissions received by the partnership which are not subject to renegotiation, the net income, after expenses, of

the partnership for, or attributable to, the 3 years 1943-1945, amounted to the total net sum of \$300,000. That is to say, the partnership received during the 3-year period from various ones of the eight corporations involved, commissions in the net amount of \$300,000.

The partnership received from various ones of the eight corporations involved in each of the years 1943-1945, the net amount set forth below, and these net amounts are involved in this case:

Year	Net receipts of partnership
1943-----	\$56,000
1944-----	104,000
1945-----	<u>140,000</u>
Total-----	300,000

The respondent now claims that of the total net profit of the partnership for each of the years 1943-1945, \$20,000 for each year constituted reasonable compensation for the services rendered to its clients, and the following net profits were excessive: \$36,000 for 1943; \$84,000 for 1944; and \$120,000 for 1945.

The stipulated facts are found as stipulated; the stipulations of facts are incorporated herein by this reference.

Reasonable compensation for the partnership's services is \$30,000 for 1943; \$50,000 for 1944; and \$70,000 for 1945. Petitioner's profits for 1943, 1944, and 1945 were excessive to the extent of \$26,000, \$54,000, and \$70,000, respectively.

OPINION

HARRON, Judge: The first issue presents the problem whether any of the Edell partnership's earnings for each of the 3 years, 1943-1945, inclusive, is subject to renegotiation under the provisions of section 403 (a) (5) (B) of the Renegotiation Act of 1942, as

amended.^{2/} If that issue is decided in the affirmative, another ques-
 617 tion must be decided, the amount in each year of the partner-
 ship's excessive profits, if any, under the provisions of section 403
 (a) (4) (A). It is now well established that in a Tax Court proceeding
 for the redetermination of excessive profits the petitioner has the
 burden of proving that the respondent's determination is erroneous
 "with respect to any amount up to that originally determined as ex-
 cessive, and that the respondent has the burden in respect to any
 additional amounts proposed for the first time in his answer." Nathan
Cohen v. Secretary of War, 7 T.C. 1002, 1011; Bass v. Stimson, 20
 T. C. 428, 434. The questions to be decided under the first issue,
 relating to the contracts or arrangements made by the petitioner with
 various corporations, involve the provisions of section 403 (a) (5) (B).
 The petitioner has the burden of proving that the respondent erred in
 its determination that section 403 (a) (5) (B) applies to all such con-
 tracts or arrangements. Under the second issue, the respondent has

^{2/} SEC. 403 (a). For the purpose of this section --

* * * * *

(5) The term "subcontract" means --

(A) Any purchase order or agreement to perform all or any part
 of the work, or to make or furnish any article, required for the per-
 formance of any other contract or subcontract, but such term does not
 include any purchase order or agreement to furnish office supplies; or

(B) Any contract or arrangement other than a contract or arrange-
 ment between two contracting parties, one of which parties is found by
 the Board to be a bona fide executive officer, partner, or full-time em-
 ployee of the other contracting party, (i) any amount payable under which
 is contingent upon the procurement of a contract or contracts with a
 Department or of a subcontract or subcontracts, or determined with
 reference to the amount of such a contract or subcontract or such con-
 tracts or subcontracts, or (ii) under which any part of the services
 performed or to be performed consists of the soliciting, attempting to
 procure, or procuring a contract or contracts with a Department or a
 subcontract or subcontracts: Provided, That nothing in this sentence
 shall be construed (1) to affect in any way the validity or construction
 of provisions in any contract with a Department or any subcontract,
 heretofore at any time or hereafter made, prohibiting the payment
 of contingent fees or commissions; or (2) to restrict in any way the au-
 thority of the Secretary or the Board to determine the nature or amount
 of selling expenses under subcontracts as defined in this subparagraph,
 as a proper element of the contract price or as a reimbursable item of
 cost, under a contract with a Department or a subcontract.

the burden of proof in respect to an additional amount for 1943 which it claimed for the first time at the trial constituted excessive profits, namely, \$10,265. ^{3/} Otherwise, the petitioner has the burden of proving that the respondent's original determination of the amount of excessive profits for 1943, \$25,735, is incorrect, and that the respondent's determinations of amounts of excessive profits for 1944 and 1945 are erroneous. It is noted, further, that if the second issue is reached, the question must relate to each of the years 1943-1945, inclusive, separately, rather than to the 3-year period taken as a whole.

Under subsection (c) (1) of section 403 of the Renegotiation Act of 1942, as amended. ^{4/} it is provided, in part, unless there is request by a contractor or subcontractor to the proper renegotiation authority
 618 (the War Contracts Price Adjustment Board, in this case) the power to renegotiate shall be exercised "with respect to the aggregate of the amounts received or accrued during the fiscal year * * * by a contractor or subcontractor under contracts with the Departments and subcontracts." Section 403(a) (8) defines fiscal year to mean the taxable year of the

^{3/} The respondent's original determination was that petitioner realized profits for 1943, 1944, and 1945, in the amounts of \$25,735, \$85,541, and \$170,377, respectively. Respondent, at the trial, made the claim that excessive profits were realized for 1943 in the amount of \$36,000. Under a stipulation, respondent has receded somewhat from its original determination in respect to 1944 and 1945 in that it now claims that in these years profits were excessive in the amounts of \$84,000 and \$120,000.

^{4/} (c) (1) * * * The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor.
 * * *

contractor or subcontractor under chapter 1 of the Internal Revenue Code. Petitioner's fiscal year, for purposes of the Renegotiation Act of 1942, as amended, is a calendar year. Petitioner did not request the Board to exercise its powers separately with respect to amounts received under any one or more separate contracts so as, for example, to determine whether excessive profits were realized during the 3-year period, 1943-1945, inclusive. The Board exercised its powers with respect to the aggregate amounts received by petitioner in each of the years 1943-1945, inclusive, and issued three separate orders, one for each year. This Court must, therefore, in this case, consider the question of whether petitioner realized any excessive profits on the basis of the aggregate amounts received by petitioner in each of the years 1943, 1944, and 1945. Sec. 403 (e) (1). ^{5/}

Issue I. This issue presents a question of fact as to whether Harry Edell solicited or procured Government contracts or subcontracts for each of eight corporations from which the Edell partnership received commissions during the years 1943-1945, inclusive. Respondent determined that the partnership's profits during each of those years are subject to renegotiation, and its argument in support of its determination is that the arrangements with each of the eight corporations, from which the partnership's profits were derived, constituted "subcontracts" as defined in section 403(a) (5) (B). Petitioner contends that none of the eight arrangements constituted "subcontracts" as so defined, and its principal argument in support of this contention is that it did not solicit or procure Government contracts or subcontracts for any of the eight corporations.

^{5/} (e) (1) Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may, within ninety days * * * after the mailing of the notice of such order under subsection (c) (1), file a petition with The Tax Court of the United States for a redetermination thereof.* * *

In George M. Wolff et al. v. Macauley, 8 T.C. 146, and in Leon Fine, 9 T.C. 600, we held that the petitioners were not subcontractors merely because their compensation was based or computed upon the amount of Government contracts or subcontracts received by their principals, since the petitioners did not solicit or procure any of such Government contracts or subcontracts. In the Wolff case, we said (p. 152):

the language of the statute aptly applies to manufacturers' agents and sales engineers who procure Government contracts for their principals and whose compensation is contingent upon the business they are able to obtain for the principals or fixed by the amount of such business.

619 We quoted this language in the Fine case, at page 608. In the instant case, petitioner was paid fixed percentages, varying from 2 1/2 per cent to 5 per cent of the amounts paid by the Government to each of its principals under Government contracts. The Wolff and Fine cases make it clear that this is not, in itself, enough to make the arrangements subcontracts under section 403 (a) (5) (B). It is necessary, also, that the petitioner should have solicited or procured the Government contracts received by its principals.

Petitioner argues that the services performed by the partnership are sufficiently similar to the services performed by the petitioners in the Wolff case and the petitioner in the Fine case, to require the same conclusion as we reached in those cases, namely, that the petitioner did not solicit or procure Government contracts, and that, therefore, it was not a subcontractor whose profits are subject to renegotiation.

In French v. War Contracts Price Adjustment Board, 13 T. C. 276, we concluded that the services performed by French constituted soliciting or procuring Government contracts, and we therefore held that he was a subcontractor whose profits are subject to renegotiation. Respondent argues that the services performed by the petitioner are sufficiently similar to those performed by French (in the French case) to require the same conclusion.

The facts have been set forth at length in our Findings of Fact. Nevertheless, we believe a brief summary of the facts will be useful.

Petitioner had eight clients during the 3 years 1943-1945. It had one contract, or arrangement, with each of its clients. The parties have stipulated that the services performed by the petitioner for each of its eight clients and that the terms of the arrangement it had with each one were substantially the same. The evidence is general and fragmentary; it does not show in detail as to each of the eight corporations the precise services which were performed by petitioner. However, under the stipulation of the parties, if it is established that petitioner solicited or procured a Government contract for one of the eight corporations, it follows that we may find and conclude that it solicited or procured a Government contract for each of the eight corporations.

The burden of proof is upon petitioner and if it has failed to show what it did for each of its eight clients, there is failure of proof.

The record includes letter memoranda of four of the eight agreements which the petitioner had with its clients. If the question were to be decided solely upon the basis of these letter memoranda of agreement, there would be considerable strength in petitioner's contentions. The agreements which were entered into by Edell on behalf of the petitioner provided that Edell's duties would include carrying on various kinds of research, making analyses, obtaining information, and serving in an

620 advisory capacity. The draftsman did not, in every instance, include a reference to Edell's obtaining Government contracts. But the question in this case turns upon whether, in fact, each contract, or arrangement, of petitioner with a principal embodied an agreement that Edell would solicit, attempt to procure, or procure a contract, or contracts, with the Government for a principal. Such agreements may have been oral. Section 403 (a) (5) (B) is not limited to written contracts or arrangements.

Decision of the issue in this case cannot be made to depend

solely upon the terms of the few examples of letter memoranda agreements between petitioner and some of the corporations which have been placed in evidence by the petitioner. If the issue were to be so limited, it would become an easy matter to avoid the intent of the Renegotiation Act by the simple device of writing agreements which contain no specific provision coming within section 403 (a) (5) (B). Congress did not intend to permit renegotiation to be so easily escaped. Section 403 (a) (5) (B) (ii) is applicable to services "performed" as well as to services "to be performed." The question here is whether, in fact, Edell agreed to solicit and procure Government contracts for each of the eight corporations.

From the entire record, it must be concluded that Edell agreed and was expected to solicit and procure Government contracts. Before contracting with Edell, each of the eight companies desired to obtain Government contracts, but executives of the companies did not know how to proceed to obtain them. This is shown both by the testimony of those executives of companies who were called as witnesses by petitioner, and by the testimony of Edell. The inference is unavoidable that the main reason for the companies' engaging Edell was that they expected him to obtain Government contracts for them. Furthermore, respondent introduced in evidence a file of copies of correspondence between Edell and the various clients of petitioner (Exhibit B) which comprises 290 letters. All of this correspondence has been carefully examined and examples thereof have been included in the Findings of Fact. These quotations from the correspondence involve each one of the eight clients which are involved. They are fairly typical of much that is covered by the correspondence. The quoted letters show clearly that Edell solicited and procured Government contracts for petitioner's clients. Another example is as follows: Edell learned from the Government authorities at Wright Field that a contract for the manufacture of the "Knutson Vest" had been awarded to the Breslee Manufacturing Co. On September 20, 1944 he wrote to Breslee soliciting a subcontract

for Colonial to produce a component part of the Knutson Vest, a giant jackknife, and subsequently a subcontract was awarded by Breslee to Colonial Knife for production of the Jiant Jack Knife.

621 As has been set forth in the Findings of Fact, the evidence shows clearly that Harry Edell, the principal member of the partnership, was authorized to and did represent each of the partnership's eight clients in dealings with various Government agencies, and that he performed the following services: Finding out and advising each of the eight companies about opportunities for Government contracts so as to insure issuance to each of the companies of invitations to bid on Government contracts; assisting each of the companies to prepare and submit bids on Government contracts; negotiating the terms of Government contracts for each of the companies; and contacting Government procurement offices so as to stimulate their interest in the products of each of the companies. These are substantially the same services which were performed by the petitioner in French v. War Contracts Price Adjustment Board, supra, where we held that the petitioner was a subcontractor. Upon the whole record, our conclusion is that petitioner solicited and procured Government contracts or subcontracts for each of the eight corporations. The partnership undoubtedly rendered other services which were of value both to the Government and to its principals in servicing Government contracts after they were awarded to the principals, but since petitioner also solicited and procured these Government contracts for its principals, and since it agreed to do so, the contracts, or arrangements, under which it performed the services of soliciting and procuring Government contracts were subcontracts within the meaning of section 403 (a) (5) (B) (ii).

Petitioner argues, in effect, that in order for it to be a subcontractor within the meaning of section 403 (a) (5) (B), as that section has been construed in George M. Wolff et al. v. Macauley, supra, and Leon Fine, supra, it is necessary that it should have procured all of the Government business out of which it was paid a percentage. Petitioner errs in this

contention. In order to constitute each of the eight arrangements as subcontracts, it is necessary only that petitioner should have procured some part of the Government business received by each of the eight corporations, of which it was paid a percentage. This is the rule set forth in French v. War Contracts Price Adjustment Board, *supra*, at 280. In other words, if the Edell partnership procured at least one Government contract for each of the eight corporations, then all of the profits derived by the partnership from commissions on Government contracts received by each of the eight corporations is subject to renegotiation, even if part of such commissions was paid on Government contracts which the partnership did not procure.

Petitioner had the burden of proof; it was obliged to establish that, with respect to each arrangement with a client, it did not solicit or procure any Government contracts. This, petitioner has failed to do. On the contrary, the evidence shows affirmatively that petitioner did solicit and procure some Government contracts or subcontracts for each of the partnership's eight clients.

The Wolff and Fine cases, relied upon by petitioner, are readily distinguishable. In neither of those cases did the petitioners solicit or procure any Government contracts or subcontracts for their principals; their compensation was based or contingent upon the amount of the Government contracts or subcontracts procured by their principals, and not by them. In the instant case, the Edell partnership's compensation was based, or was contingent, at least in part, upon the amount of Government contracts or subcontracts procured by the partnership for each of its principals.

In the Wolff case, the petitioners were architects, and their duties were to prepare drawings of installations to be built for the Kaiser Co., and to issue invitations to bid on contracts for construction of such installations. In the Fine case, the petitioner's duties were to obtain and correlate technical information from airplane manufacturers to which the Raymond De-Icer Co. sold de-icing equipment, and to coordinate production schedules. The services performed by Edell were in no

way similar; he clearly solicited and procured Government contracts or subcontracts.

Petitioner argues, also, that since it did not become entitled to any compensation until after one of the eight corporations had successfully completed a Government contract and had been paid by the Government, its compensation was not computed or contingent upon the amount of Government contracts it obtained for its principals. We are unable to follow petitioner's reasoning. Before Government contracts were successfully completed by the eight corporations and the corporations were paid by the Government, petitioner first procured the Government contracts, and it was ultimately paid a percentage of such Government contracts. Therefore, the amount of the partnership's compensation was, in the first instance, contingent upon its obtaining Government contracts for its principals, and it is immaterial that it had to wait for actual payment of its compensation until after the Government contract had been successfully completed and the principal paid by the Government, or even that its compensation might also be secondarily contingent upon such successful completion and payment.

Under arrangements between petitioner and each of eight corporations, the compensation received by petitioner was contingent or computed, at least in part, upon the amount of Government contracts which petitioner procured for each of the eight corporations, during the years 1943-1945, inclusive. It follows that petitioner was a sub-
 623 contractor within the meaning of section 403 (a) (5) (B) (i), and that in each year it received income which is subject to renegotiation.

Issue 2. The next question is what amount, if any, of the profits derived by petitioner under the arrangements was excessive. The parties have stipulated that these net profits, before any allowance by the respondent of a reasonable amount for each year, amounted to \$56,000, \$104,000 and \$140,000 for 1943, 1944, and 1945, respectively. Respondent contends that for each year \$20,000 represents a reasonable profit. Petitioner claims that no part of its net profits for any year was excessive.

In their stipulation as to the amount of net profits derived from renegotiable business in each of the years 1943-1945, inclusive, the parties have allocated a net amount received in 1946 to the years involved, under section 403 (h).^{6/} Cf. Rosner v. W.C.P.A.B., 17 T. C. 445, 458, 461.

There is no question to be decided relating to the allowance of a reasonable amount for the expenses of the partnership in each year. Respondent has allowed \$14,000 for each year, and this allowance has been accepted by petitioner. Cf. Greaves v. War Contracts Price Adjustment Board, 10 T.C. 886, 891-893.

Petitioner contends that the amount of \$300,000, the total amount of net profits for the 3 years involved, does not constitute excessive profits. In effect, petitioner asks the Court to consider the question under this issue as one which involves a determination of the total amount of excessive profits for 3 years considered together, rather than a determination of the amount of excessive profits for each of 3 years. At the outset, therefore, it is necessary to point out that the question must be considered with respect to each year, rather than with respect to one period of 3 years, under section 403 (c) (1).

^{6/} SEC. 403 (h). This section shall apply only with respect to profits derived from contracts with the Departments and subcontracts which are determined under regulations prescribed by the Board to be reasonable allocable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor in keeping his books, profits determined to be so allocable shall be considered as having been received or accrued not later than the termination date. For the purposes of this subsection, the term "termination date" means whichever of the following date first occurs --

- (1) December 31, 1945; or
- (2) the date proclaimed by the President as the date of termination of hostilities in the present war; or
- (3) the date specified in a concurrent resolution of the two Houses of Congress as the date of the termination of hostilities in the present war.

In support of its contention that no part of its profits for any of the years involved was excessive, petitioner argues that the risks incurred and the capital used in its business were large because it had to defray its own expenses and it was not paid until after one of its clients had made delivery to the Government and had been paid by the Government; that the character of the services rendered by the partners, as well as the time and effort expended by them, requires a high rate of compensation; and that the partnership should be credited with time and effort expended by Harry Edell in 1942 and in 1946, in work affecting the earnings of the partnership in 1943, 1944, and 1945, the years here involved.

624 Respondent, in support of its contention that all of the profits which exceed \$20,000 per year are excessive, argues that petitioner acted simply as a conveyor of information from Government agencies to each of its eight clients.

Section 403 (a) (4) (A)^{7/} lists the factors to be taken into consid-

^{7/} Sec. 403. (a) For the purposes of this section --

* * * * *

(4) (A) The term "excessive profits" means the portion of the profits derived from contracts with the Departments and subcontracts which is determined in accordance with this section to be excessive. In determining excessive profits there shall be taken into consideration the following factors:

(i) efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of materials, facilities, and manpower;

(ii) reasonableness of costs and profits, with particular regard to volume of production, normal prewar earnings, and comparison of war and peacetime products;

(iii) amount and source of public and private capital employed and net worth;

(iv) extent of risk assumed, including the risk incident to reasonable pricing policies;

(v) nature and extent of contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance;

(vi) character of business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turnover;

(vii) such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted.

eration in determining excessive profits. Since petitioner was not a manufacturer, some of the factors listed in section 403 (a) (4) (A) obviously are not relevant. Consideration has been given to the factors which are applicable to petitioner's business.

We do not think that petitioner incurred any substantial risks in its business. Although petitioner had to wait for its compensation until after the Government had paid its client, in the case of each Government contract it solicited or procured, the record establishes that the partnership enjoyed a high degree of certainty that it would ultimately receive commissions sufficient to cover all of its expenses and provide adequate compensation for the time of the partners, as well as a substantial profit.

The only capital which was used in petitioner's business is the amount of \$5,000 loaned to the partnership by Lewis Edell. Petitioner has not offered any evidence to show that any other capital was used in the business. The partnership agreement provided for prompt repayment of this \$5,000 to Lewis, as well as for division of all partnership profits. Petitioner has not shown that any partnership profits were retained in the business and used as capital. However, it is clear that some small capital was necessary to the conduct of petitioner's business,

625 and our determination of the amount of excessive profits in each year includes an allowance for a reasonable return on such capital as is estimated to have been used in the business in each year.

The principal element in our determination of the amount of profits in each year which was not excessive, is the value of the personal services rendered by the partners. This includes primarily the services of Harry Edell. Lewis Edell performed only negligible services for the partnership. He was employed full time, during the years involved, as a sales agent for several sportswear manufacturers, and he devoted little time to the work of the partnership. On the other hand, Harry Edell devoted long hours each day to the work of the partnership, he worked on weekends, and he never took a vacation during the years involved.

Petitioner introduced the testimony of two management consultants, as expert witnesses, upon the value of the services performed by the Edell partnership. We have considered this testimony. We have considered, also, the fact that part of the profits of petitioner during 1943-1945, inclusive, was the result of work done by Harry Edell in 1942. Cf. Armstrong v. War Contracts Price Adjustment Board, 15 T.C. 625, 636-637, affirmed per curiam 194 F. 2d 875, certiorari denied 343 U.S. 967.

Although the services performed by Edell were not of a technical nature, and very little, if any, knowledge of engineering was required in their performance, the record establishes that the services performed had substantial value to the Government and to each of the partnership's eight clients. Executives of each of the eight companies lacked the ability to convert to war production and to fulfill Government requirements without the kind of assistance provided by Edell. By ascertaining what products each of the companies could produce for the Government with their existing plants and equipment, by obtaining technical and cost information for them, and by locating sources of supplies and machinery they required, Edell aided each of the companies to convert to war production, and to produce many goods necessary to the war effort. Thus, he made some contribution to the war effort.

Upon the whole record, we think that the amounts which the respondent determined to be excessive profits for each year, are too high. After a careful consideration of all of the evidence, it is found and concluded that the petitioner derived excessive profits from renegotiable income in the amounts of \$26,000 \$54,000, and \$70,000 for the years 1943, 1944, and 1945, respectively.

An order will be issued in accordance herewith.

PLAINTIFF'S EXHIBIT NO. 1

WENSTEIN, PITCHER, AMANN & PARR
25 BROAD STREET
NEW YORK 4

December 7, 1953

Warren E. Burger, Esq.
Assistant Attorney General
Civil Division
Department of Justice
Washington 25, D. C.

Attention James H. Prentice, Esq.

Re: Harry Edell and Lewis H. Edell,
a copartnership, d/b/a Harry Edell
v. War Contracts Price Adjustment
Board, Tax Court No. 882-R.

Dear Sir:

Receipt is acknowledge of a copy of your letter of December 2, 1953 relative to the above case addressed to Messrs. Pittman & Roberts.

It is not clear to me in view of the statement in your letter -

"In arriving at a proposed counteroffer totaling \$183,000 the amount of expenses to be allowed to Mr. Edell as well as the profits which the partnership would retain after renegotiation are substantially in agreement with the total figures set forth in your letter of November 12, 1952,"

how the resultant figure of \$183,000 was arrived at.

I have in my files a computation which I had been led to believe was in accordance with the records of your department, which shows Mr. Edell's commissions year by year and allocates those commissions between contracts admittedly not subject to renegotiation and contracts which might be claimed to be subject to renegotiation. I enclose a copy of that computation.

I would like to make an appointment to speak with Mr. Prentice regarding those computations which form the basis for the \$183,000 mentioned in his letter either the latter part of this week or the early

part of next week and I would appreciate it if Mr. Prentice would call me collect to arrange such a conference.

My purpose in sending the tabulation enclosed with this letter is to furnish Mr. Prentice before our meeting with a copy of what I believe to be the correct figures based upon the assumption that the doctrine of the Fine case would not apply.

Very truly yours,

Douglas M. Amann

* * *

PLAINTIFF'S EXHIBIT NO. 2

* * *

December 2, 1953

Pittman & Roberts,
Attorneys at Law,
Bowen Building,
Washington 5, D. C.

Re: Harry Edell and Lewis H. Edell, a
copartnership, d/b/a Harry Edell v.
War Contracts Price Adjustment
Board, Tax Court No. 882-R.

Gentlemen: .

You will recall that in your letter dated November 12, 1952, you proposed an offer in compromise on behalf of Mr. Edell of the above Tax Court renegotiation case.

On November 23, 1953, the Attorney General authorized the rejection of Mr. Edell's offer totaling \$42,109 for the fiscal years involved and authorized the proposal of a counteroffer totaling \$183,000 for the three fiscal periods. Accordingly, you are hereby notified that Mr. Edell's offer has been and is hereby rejected.

We herewith propose a counteroffer under the terms of which the parties would agree to stipulate to the Tax Court that the partnership's excessive profits for the calendar years 1943, 1944 and 1945 were in the amounts of \$12,000, \$57,000 and \$114,000, respectively.

As you pointed out in your letter of November 12, 1952, the offer in compromise was based primarily on your position that under the rule of the Leon Fine (9 T.C. 600) and George M. Wolff (8 T.C. 146) renegotiation cases a large majority of the commissions received or accrued by the partnership were not subject to renegotiation. It is our view that even if Mr. Edell's contracts with his principals did not require him to solicit, attempt to procure, or actually to procure, contracts, such contracts are nevertheless subject to renegotiation if, in performing the "services" for his principals Mr. Edell did in fact solicit, attempt to procure or actually procure contracts for his principals. We believe that this position is supported factually by existing documentary evidence and is correct as a matter of law under the literal language of the Renegotiation Act and the legislative history involving Section 403 (a) (5) (B) of the Renegotiation Act.

In arriving at a proposed counteroffer totaling \$183,000 the amount of expenses to be allowed to Mr. Edell as well as the profits which the partnership would retain after renegotiation are substantially in agreement with the total figures set forth in your letter of November 12, 1952.

Our Mr. James H. Prentice, to whom the case is assigned, will be pleased to confer with you in Washington at a mutually convenient time in order to discuss more fully the factual and legal problems presented in the case as well as the accounting and reasoning involved in reaching the figures of the proposed counteroffer.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By: Edward H. Hickey, Chief,
General Litigation Section

PLAINTIFF'S EXHIBIT NO. 3

February 1, 1954

Mr. Harry Edell
Mayflower Hotel
Washington, D.C.

Dear Mr. Edell:

I have your letter of January 31st.

I am enclosing seven typewritten sheets which show the net cost of the renegotiation settlement proposed by Prentice. I cannot, however, at this time, give you any tax figures, although I hope to be able to do so the latter part of this week.

In this connection you should be mindful that we were retained to adjust your 1943 through 1945 taxes. Because, however, partnership income was reported by you and your brother in the years 1946 and 1947, the tax adjustments for the years 1943 through 1945 will be only a part of the total tax liability. As for 1946, I have a copy of your tax return and I will be able to estimate the adjustment which will be made by the tax people on the basis of the disallowance of the partnership. I note, however, that in the partnership return for that year a deduction of \$30,000 on account of expenses was taken. I am certain that the Internal Revenue Department will not allow anything like that amount for that year. The date that I have here would not indicate to me that the tax people will allow more than a token amount for expenses for that year. You might see whether you have any additional data which you can use to bolster this claimed deduction.

I do not have a copy of your 1947 tax return and hence am unable to offer any opinion as to a possible settlement with reference to it.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By

RENEGOTIATIONHarry Edell

\$ 2,878.95
 17,007.77
20,099.19
 \$ 39,985.91

Lewis Edell

\$ 1,971.09
 12,945.80
16,201.23
 \$31,118.12

Total tax credit

\$71,104.03

Excess profits \$183,000.00

Less tax credit 71,104.03\$111,895.97

Interest at 4% from 6/29/49 to 3/21/52 \$12,164.39

Interest at 6% from 3/21/52 to payment
date assumed 3/21/54 13,427.44

Costs

38.80

Total renegotiation cost

\$137,526.60TAX CREDIT COMPUTATION1943

Partnership net income per return

\$24,454.58

Allocated - Harry Edell \$17,227.29

Lewis Edell 7,227.29

\$24,454.58

Adjustment on account excessive profits

12,000.00

\$12,454.58

Salary Harry Edell

10,000.00

\$ 2,454.54

Share Lewis Edell

1,227.29

As Adjusted - Harry Edell \$11,227.29

Lewis Edell 1,227.29\$12,454.58

Decrease - Harry Edell \$6,000.

Lewis Edell 6,000.

Harry Edell

Income per return	\$19,654.79
Less Excess Profits	<u>6,000.00</u>
Revised Income	\$13,654.79
Exemptions and Credits	<u>1,900.00</u>
Surtax net income	\$11,754.79
Earned income credit	<u>1,365.47</u>
Balance subject to normal tax	<u>\$10,389.32</u>

Normal tax at 6% -	\$623.35
Surtax -	<u>2,581.53</u>
	\$3,204.88

Total income tax \$ 3,204.88

Victory tax net income per return	\$19,682.29
Less Excess Profits	<u>6,000.00</u>
	\$13,682.29

Revised Victory tax net income	\$13,682.29
Less Spec. Ex.	<u>624.00</u>
Income subject to Victory tax	\$13,058.29
Victory tax before credit	652.91
Victory tax credit 44%	<u>287.28</u>
Net Victory Tax	<u>365.63</u>
Total Taxes 1943	\$ 3,570.51
Income Tax 1942	1,215.59

	\$1,215.59
Forgiveness	<u>911.70</u>

Unforgiven portion 303.89

Total income and Victory tax \$ 3,874.40

Tax assessed	\$6,753.35
Total liability	<u>3,874.40</u>
Tax credit -Harry	<u>\$2,878.95</u>

TAX CREDIT COMPUTATION1943 - Lewis Edell

Income per return		\$11,666.92
Less excess profits		<u>6,000.00</u>
Revised net income		\$ 5,666.92
Exemptions and credits		<u>1,200.00</u>
Surtax net income		\$ 4,466.92
Earned income credit		<u>566.69</u>
Balance subject to normal tax		<u>\$ 3,900.23</u>
Normal tax	\$234.01	
Surtax	<u>701.39</u>	
Total income tax		\$ 935.40
Victory tax net income per return	\$12,051.92	
Less excess profits	<u>6,000.00</u>	
Revised Victory tax net income	\$ 6,051.92	
Less specific exemption	<u>624.00</u>	
Income subject to Victory tax	\$ 5,427.92	
Victory tax before credit	\$271.39	
Victory tax credit (40%)	<u>108.55</u>	
Net Victory tax		<u>162.84</u>
Total income tax and Victory tax		\$ 1,098.24
Income Tax 1942 -0-		<u>-0-</u>
Total income tax		\$ 1,098.24
Tax assessed	\$3,069.33	
Total liability	<u>1,098.24</u>	
Tax credit-Lewis	<u>\$1,971.09</u>	

TAX CREDIT COMPUTATION1944

Partnership net income per return		\$63,939.77
Allocated Harry Edell	\$36,969.89	
Lewis Edell	<u>26,969.88</u>	
	\$63,939.77	
Adjustment		<u>57,000.00</u>
Partnership net income as adjusted		\$ 6,939.77
All allocable to Harry Edell		
Decreases		
Harry Edell	\$30,030.07	
Lewis Edell	<u>26,969.88</u>	
	<u>Harry Edell</u>	
Net income per return		\$38,242.35
Less excess profits		<u>30,030.07</u>
Adjusted net income		\$ 8,212.28
Exemptions		<u>1,500.00</u>
Surtax net income		\$ 6,712.28
Surtax		1,150.94
Adjusted net income		8,212.28
Less normal tax ex.		<u>500.00</u>
Normal tax net income		\$ 7,712.28
Normal tax		<u>231.36</u>
Total tax		<u>\$ 1,382.30</u>
Tax assessed	\$18,390.07	
Tax liability	<u>1,382.30</u>	
Tax credit -	<u>\$17,007.77</u>	

TAX CREDIT COMPUTATION1944 - Lewis Edell

Net income per return	\$30,292.18
Recapture excess profits	<u>26,969.88</u>
Adjusted net income	\$ 3,322.30
Surtax exemption	<u>1,000.00</u>
Surtax net income	\$ 2,322.30
Surtax	644.46
Adjusted net income	3,322.30
Normal tax exemption	<u>500.00</u>
	\$ 2,822.30
Normal tax	84.66
Total tax	729.12

Tax assessed	\$13,674.92
Tax liability	<u>729.12</u>
Tax credit	<u>\$12,945.80</u>

1945

Partnership income per return	\$ 71,936.25
Allocated Harry Edell	\$40,968.13
Lewis Edell	<u>30,968.12</u>
	\$71,936.25
Adjustment	<u>114,000.00</u>
Partnership income as adjusted	-0-
Decreases Harry Edell	\$40,968.13
Lewis Edell	<u>30,968.12</u>

1945 - (Contd.)

HARRY EDELL

Net income per return		\$40,290.54
Less excess profits		<u>40,968.13</u>
		-0-
Tax assessed	\$20,099.19	
Tax liability	<u>-0-</u>	
Tax credit		<u>\$20,099.19</u>

LEWIS EDELL

Net income per return		\$34,872.00
Recapture excess profits		<u>30,968.12</u>
Adjusted net income		\$ 3,903.88
Exemption		<u>500.00</u>
Normal tax net income		\$ 3,403.88
Normal tax		<u>102.11</u>
Adjusted net income		\$ 3,903.88
Surtax exemptions		<u>1,000.00</u>
Surtax net income		\$ 2,903.88
Surtax		404.62
Total tax liability		506.73
Tax assessed	\$16,707.96	
Tax liability	<u>506.73</u>	
Tax credit		<u>\$16,201.23</u>

PLAINTIFF'S EXHIBIT NO. 4

LOWENSTEIN, PITCHER, AMANN & PARR
25 BROAD STREET
NEW YORK 4

COPY

July 21, 1954

Mr. Harry Edell
The Mayflower
Washington, D. C.

Dear Mr. Edell:

I have your letter of July 15th. I have reviewed our files and carefully re-read our letter to you of May 14th. I am convinced that the proposal made with our letter of May 14th is, if unfair, unfair only to my partners. From the client's standpoint I consider my proposal a most reasonable one, the amount being far less than the reasonable value of the services rendered to you to date by this firm. I would remind you of the following:

We were retained by you in the latter part of March, 1951. Very shortly thereafter we called the attention of Messrs. Pittman & Roberts to the doctrine set forth in the Fine Case (9 T.C. 600). After several conferences with this firm and with you we informed them that we felt that they should submit to the Department a formal offer in compromise which would be backed up with an affidavit of the services which you rendered. At your specific request we agreed to perform the services required in analyzing your correspondence and in preparing an affidavit. On May 30th you delivered to us a large mass of unclassified material and it was necessary to read and classify all of this correspondence before a start could be made on the task of drafting the affidavit. Although you were absent most of the summer of 1951 and were unable to then assist us in completing the affidavit, on October 16, 1951 we submitted a draft of the affidavit to Mr. Taylor and Mr. Stoval for their comments. The affidavit was thereafter revised and placed into final form on December 6, 1951. In the light of the absence of finalcial records and the tremendous task involved

in attempting to classify the correspondence and the intervention of vacations, we believe this work was accomplished as quickly as could reasonably be expected. I consider the allocation of \$3,000 as a charge for preparing this affidavit a most reasonable one and I certainly would not, at the present time, even consider undertaking a job of such magnitude for such a modest fee.

With regard to the charge for opposing the Government's motion for judgment on the pleadings, the statements contained in your letter are based on a misconception both of the law and of the facts. In the first place, Pittman & Roberts did not argue the same motion the year previous. They made a motion to dismiss the complaint of the Government prior to filing your answer and for a stay. Their motion was denied. The motion which this firm opposed was the first motion made by the Government for judgment in the case. In the second place, it is absolutely untrue that I insisted on arguing the motion in the New York courts. I remember distinctly pointing out to you that Pittman & Roberts should handle that motion since you had a fee arrangement with them which would permit you to request them to handle this matter for you without additional expense. You emphatically stated, however, that you did not wish them to argue the motion and requested me to do so. In the third place, I called your attention to the fact that I was very dubious that the motion could be successfully opposed and urged that you give consideration at that time to the posting of security. This you refused to do. In view of the fact that you desired every possible argument to be made in opposition to the Government's motion, it was necessary to research the law on this subject most thoroughly. This research disclosed that there was a possibility of successfully contending that the procedure under which the Government was operating was unconstitutional. Because you stated that you wished to leave no stone unturned in an effort to defeat the motion, these arguments were exhaustively briefed and the brief was submitted to Judge Goddard. At the argument, which you attended,

the Judge stated that he, as a trial judge, would not go into the constitutionality of the procedure. The fact that the Judge adopted this attitude in no wise detracts from the fact that we, at your request and, in fact, at your insistence, went through the necessary legal research to brief this point thoroughly. Although Judge Goddard granted the Government's motion for judgment, he did not accede to their demand for 6% interest and we were successful in having the rate of interest reduced to 4%, although the Government brought to the attention of the court numerous authorities involving renegotiation refunds where 6% interest had been awarded.

After the motion had been decided adversely to you, you finally agreed to post security in an effort to avoid execution under the judgment. The escrow agreement which was prepared at that time was in the form suggested by and acceptable to the Department of Justice of the United States, was examined by both Mr. Taylor and myself, and in the opinion of all of us represented a proper agreement for you to execute. We believe that the charge which we have made against you for preparing this escrow agreement is extremely reasonable.

I do not understand your comment relative to an alleged failure on our part to docket the judgment in the office of the Clerk of the County of New York. The only person obtaining advantage by docketing a judgment is the judgment creditor, which in this case was the Department of Justice. The fact that the United States Government did not docket the judgment in the County Clerk's office had no bearing whatsoever on the difficulties which you encountered in attempting to sell real estate in which you had an interest. The only result of the failure to file was that the attorney who handled the real estate transaction for you might have argued that the judgment was not a lien on the property and that therefore no release from the Government was necessary. You have also stated that the escrow agreement was "loosely composed" and that the motion to release the Government's alleged lien was made necessary because of this. The fact is that

you never revealed to us at the time the escrow agreement was prepared that you had any interest in real estate. Despite this, however, the intention of the parties was spelled out in the escrow agreement clearly enough to enable us to obtain for you a result which you very much desired and which, so far as our own research or that of the Government or the court disclosed, was entirely unprecedented. You apparently were well aware of this since, even before the court rendered its decision, you wrote a letter complimenting us on the manner in which this motion was handled.

The statements contained in the last paragraph of page 2 of your letter are entirely erroneous. At the time you called us into this situation you had a petition filed in the Tax Court seeking relief. We have in nowise delayed hearing on that petition. The proceeding is still pending and when reached in its normal course will be tried unless, in the meantime, you can settle your differences with the Department of Justice.

The tone of your letter convinces me that you have no intention of treating fairly with your attorneys. I remind you that when you first came to this office I told you that I felt you should allow Pittman & Roberts to handle the matter and that you were incurring unnecessary additional expense by retaining our firm. You insisted, however, that you wanted us to represent you and in fact asked your brother to intercede with us to interest ourselves in your affairs. We, at that time, told you that our charge to you would be based on the time which we spent on the matter and if you will refer to your correspondence you will find that very clearly set forth in our letter to you of March 20, 1951. Despite the fact that we have made a very substantial reduction in the amount we are requesting you presently to pay, you have quibbled with even that minimum payment. Under the circumstances we feel that it would be useless for us to continue to represent you. Will you please, therefore, send us your check in payment of the accumulated fees of \$1,855, as reviewed in our letter to you of May 14, 1954, upon receipt of which we will be pleased to turn over to you the

papers in this case.

Our offer to continue to represent you upon the terms set forth in my letter of May 14th is hereby withdrawn.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By Douglas M. Amann

PLAINTIFF'S EXHIBIT NO. 5

New York, N. Y.
July 28, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my lawful attorney to take all steps, proceedings and actions necessary, or that you may deem proper in the settlement of my dispute with the Department of Justice concerning the Renegotiation Act of 1951, as amended.

I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the Justice Department offer of One Hundred Thirty-Eight Thousand Dollars (\$138,000.00) and the final settlement of the dispute. It is understood that your compensation is limited to the amount stipulated in this agreement.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.
Dated: New York, N.Y., July 28, 1954.

/s/ William J. Casey

PLAINTIFF'S EXHIBIT NO. 6

New York, N. Y.
July 28, 1954

William J. Casey, Esq.
60 East 42nd Street
New York 17, N. Y.

Dear Mr. Casey:

I, the undersigned, hereby retain you as my attorney to take all steps, proceedings and actions necessary, or that you may deem proper to settle my income tax disputes currently pending with the United States Government.

I hereby tender the sum of \$2,500.00, which is to be a minimum fee for your services. I hereby stipulate and agree that you may retain, as and for your compensation, thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement, together with such costs as may be awarded in any action instituted by you on my behalf concerning tax deficiencies assessed for the calendar years 1943, 1944, 1945, 1946, and 1947, and any recovery made on a refund claim to be filed with respect to a tax paid on a sum of \$121,200 received in 1952 in settlement of litigation in California. It is understood and agreed that, in the determination of your fee, the deficiency proposed by the United States Government will be reduced by any amount repaid by me to the United States Government as a result of renegotiation and that you will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund.

It is further understood that the \$2,500.00 paid to you now will, in no case, be returned to me, but, in the event of a settlement, it will be used to reduce the contingency fee.

Very truly yours,

/s/ Harry Edell

I hereby accept the foregoing retainer.

Dated: New York, N. Y., July 28, 1954.

/s/ William J. Casey

PLAINTIFF'S EXHIBIT NO. 7

August 6, 1954

Mr. Harry Edell
General Delivery
Rehobeth Post Office, Delaware

Dear Harry:

We were right and you were wrong about \$183,000 being the settlement offered by the Justice Department. It shrank down to \$138,000 on the basis of Amann's estimate of the possible tax credits. The following excerpt from Judge Kaufman's opinion explains the two figures:

"On December 2, 1953, the Government rejected a settlement offer which had been made by defendant and proposed an alternative settlement for the gross sum of \$183,000, before giving effect to applicable tax credits provided by statute. Defendant asserts that he has been advised by his attorneys that the tax credits to which he is entitled would reduce his actual liability under the Government's proposed settlement to approximately \$138,000, including interest. The Government neither contradicts nor accepts this statement and notes only that it is an "obviously speculative assertion".

My percentage of the renegotiation saving should be based on the reduction before making the tax deduction. That is the way my original proposal to you was put, and I changed the figure from \$183,000 to \$138,000 when you said it was probably a typo and when Benedict mistakenly confirmed your expression of opinion. My proposition to you was as follows:

A \$2,500 retainer, deductible from the fee earned on a contingent basis.

Contingent fee of 30% of the difference between the Justice Department offer of \$183,000 and final settlement.

Plus 30% of the difference between tax deficiencies assessed

for 1943, 1944, 1945, and 1946, and the amount finally paid in settlement of these deficiencies, except that the contingency fee will not apply to reductions in the tax assessment effected as a result of amounts taken out of income by renegotiation.

Plus 30% of any recovery made on a refund claim filed with respect to tax paid on \$150,000 received in settlement of litigation in California.

Thus, you see the percentage of the renegotiation refund was in terms of before-tax money. You get 70% on which you pay taxes and that is your tax credit, and I get 30% on which I pay taxes. On the tax recoveries, I get 30% of the tax reduction, which is after-tax money to you. I pay taxes on my share and you can deduct what you pay me, so that you get a net recovery and the cost of getting recovery is reduced by a tax saving to you on the payment to me. On the renegotiation recovery, we should both share in the saving before it is reduced by a tax liability on net income.

We became confused because of the coincidence that the before-tax offer of \$183,000 shrank down to an apparent typographical error, \$138,000, after reflecting an estimated tax credit.

I am enclosing another retainer agreement reflecting this change. Will you sign and send it back to me, together with the one which it is superseding? An additional copy is enclosed for your records.

Yours,

Enclosures: Two copies of new retainer agreement

[I'm going to Dallas for 2 days, will be in Washington on Wednesday, back here Thursday. Meanwhile Benedict will hit Socolow as to whether, on the basis of your money being a trust fund, he wants to return it or go down to see Kaufman J about it.]

PLAINTIFF'S EXHIBIT NO. 10
U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE
WASHINGTON 25

* * *

October 13, 1954

Mr. William J. Casey
60 East 42nd Street
New York 17, New York

Dear Mr. Casey:

This office is in receipt of your letter of October 8, 1954, and the attached copy of the retainer fee agreement for your representation before the Treasury Department of Harry Edell.

There is enclosed for your information and future guidance a mimeographed copy of the instructions pertaining to fee agreements. When reading these you should particularly note the requirements relative to the amount involved in litigation and the amount of the retainer fee. The amount involved in litigation must be given. On this amount, rather than on the amount of reduction in savings to your client, should your maximum fee be based. Between this fee and the minimum fee there must be a substantial relationship. This latter fee may not fall below 10 percent of the maximum, as is pointed out in the enclosed instructions.

Inasmuch, therefore, as this office has not been advised of the amount involved in litigation, it is unable to determine whether the amount of your retainer fee measures up to the requirement of at least 10 percent of your maximum fee.

The file will therefore be held in open status pending the receipt of information relative to the amount involved in litigation for the years 1943 to 1947, inclusive.

Very truly yours,

/s/ George C. Lea
Director of Practice

Enclosure

PLAINTIFF'S EXHIBIT NO. 11

October 8, 1954

Mr. Harry Edell
Mayflower Hotel
Connecticut Avenue and De Sales, N.W.
Washington, D. C.

Dear Mr. Edell:

It is necessary that the enclosed affidavit be signed by you in order to comply with the Treasury Department's Regulations. We have filled out the form, so all that is necessary is your signature and the signature of two witnesses.

Enclosed is an addressed envelope for remitting the form to us.

Yours very truly,

Edward J. Brady

Enclosures: Form 790 - Revocation of Power of Attorney
(to be signed, witnessed and returned to WJC)
Envelope for returning Form 790
Carbon copy of letter dated July 28, 1954, to
Douglas M. Amann revoking Power of Attorney

PLAINTIFF'S EXHIBIT NO. 12

October 8, 1954

Director on Practice
Commissioner of Internal Revenue
United States Treasury Department
Washington, D. C.

Dear Sir:

I, the undersigned, have entered into a partial contingent fee arrangement with one Harry Edell, to represent him as an attorney and to take all steps, proceedings and actions necessary or proper to settle his income tax disputes currently pending with the United States Government.

I received the sum of \$2,500 which is to be the minimum fee for my services. It is also understood that I am to receive as

compensation thirty per cent (30%) of the difference between the proposed deficiencies and the final settlement, together with such costs as may be awarded in any action instituted by me concerning tax deficiencies assessed for the calendar years 1943, 1944, 1945, 1946 and 1947, and thirty per cent (30%) of any recovery made on a refund claim to be filed with respect to a tax paid on a sum of \$121,200 received in 1952 in settlement of litigation in California. It is understood between my client and myself that if the deficiency proposed by the United States Treasury Department will be reduced by any amount as a remit of renegotiation, I will not receive thirty per cent (30%) of the tax reduction resulting from any such renegotiation refund.

Enclosed is a copy of the retainer fee agreement between Harry Edell and myself.

Yours very truly,

Enclosure

[Filed September 17, 1956]

PLAINTIFF'S EXHIBIT NO. 14

* * * * *

APPENDIX A TO REPLY BRIEF

Mr. Edell's Statement

1. THE WITNESS: That was in the year -- approximately 1937, 1938, something like that, 1939. I say somewhere between 1937, 1938 and 1939.

BY MR. CASEY:

Q. You were making \$25,000 a year? A. That is right (T.38) cf.

T 406 & 407.

Facts established by cross-Examination or Documentary Evidence

1. Harry Edell was a bankrupt January 31, 1938 to discharge on June 17, 1940 (Ex. E). Harry Edell's income for 1938 was \$5,150 (Exhibit F).

Mr. Edell's Statement

2. Q. Now you also testified, as I understand it, shortly after this period you were sick or something.

A. That is correct.

Q. About what year was that?

A. That was beginning on or about 1939 or the middle of it, sometime around there.

Q. From the middle of 1939 to approximately when? A. To about the beginning of 1942.

Q. All right. Now you indicated that during this period you lived on returns from some insurance policies.

A. I didn't say that. I said I received returns from insurance policies. I had other funds of my own which I was using up. (T. 409).

Facts Established by Cross-Examination or Documentary Evidence

2. Harry Edell was a bankrupt January 31, 1938 to discharge on June 17, 1940 (Ex. E).

Harry Edell's income for 1938 was \$5,150 (Exhibit F).

PLAINTIFF'S EXHIBIT NO. 17A

**COMPUTATION OF ATTORNEYS FEES FOR REDUCTION
OF U.S. GOVERNMENTS EXCESSIVE PROFITS
CLAIM**

A. FINAL SETTLEMENT OFFER BY U.S. DEPARTMENT OF JUSTICE	\$ 183,000.00
B. JUDGMENT OF U. S. TAX COURT AFTER TRIAL	<u>150,000.00</u>
C. REDUCTION OBTAINED BY OFFICE OF ATTORNEY CASEY	33,000.00
D. PERCENT OF REDUCTION DUE ATTORNEY UNDER FEE AGREEMENT OF AUGUST 6, 1954	<u>30%</u>
E. DOLLAR AMOUNT OWED ATTORNEY BY DE- FENDANT UNDER FEE AGREEMENT OF AUGUST 6, 1954	9,900.00

PLAINTIFF'S EXHIBIT NO. 18A
ATTORNEY'S FEES FOR REDUCTION
OF INCOME TAXES

	<u>Amount claimed By Government</u>		<u>Amount Determined</u>		<u>Savings Effectuated</u>
1943	\$ 16,406.52	-	\$ 14,040.37	=	\$ 2,366.15
1944	32,907.71	-	21,265.84	=	11,641.87
1945	<u>75,297.19</u>	-	<u>62,592.54</u>	=	<u>12,704.65</u>
Totals	\$124,611.42	-	\$ 97,898.75	=	\$ 26,712.67
SAVINGS OBTAINED BY OFFICE OF ATTORNEY					
CASEY	-----				\$ 26,712.67
PERCENT OF SAVINGS DUE ATTORNEY UNDER FEE					
AGREEMENT OF JULY 28, 1954	-----				X 30%
DOLLAR AMOUNT OWED ATTORNEY BY					
DEFENDANT	-----				\$ 8,013.80

PLAINTIFF'S EXHIBIT NO. 19

March 20, 1958

Mr. Harry Edell
c/o University Club
1135 16th Street, N.W.
Washington 6, D. C.

Dear Harry:

We have reviewed your tax case on renegotiations with the Field Agent and the Conferee of the Appellate Staff and all of the files and records in our possession with Laurens Williams and his associate, Kenneth Liles. They have told us that they agree that we have made a good settlement and that they don't know how a better settlement can be made. As you know, the Revenue Service had been pressing us severely for a decision and we are hoping that you and Mr. Williams will arrive at a decision sometime next month. We had extreme difficulty getting this latest extension and Mr. Williams will tell you that it is definitely the last one which can be obtained.

All of these delays are no reason for you to delay in paying me the money I earned under our agreement for cleaning up the renegotiation case. I have been carrying this for three and a half years. I was agreeable to your paying this bill in 1958 because you felt it desirable in view of your own tax situation. 1958 is now here and I would greatly appreciate it if you would pay my bill, copy of which is enclosed, promptly.

Yours,

Enclosure

MR. HARRY EDELL
c/o University Club
1135 - 16th Street, N.W.
Washington 6, D. C.

March 21, 1958

As per our agreement -- 30% of difference between
\$183,000 (best offer) and \$150,000 (determined
by Court)

\$ 9,900.00

Disbursements (schedule attached)

1,003.50

\$ 10,903.50

This firm retains \$2,500.00 which was received and reported as a retainer for the settlement of tax deficiencies. This amount will be charged against fees earned under our agreement of July 28, 1954 with respect to the Income Tax deficiency proposed against you by the United States Government.

October 7, 1957

Mr. Harry Edell
c/o University Club
1135 16th Street, N. W.
Washington 6, D. C.

As per our agreement -- 30% of difference between
\$183,000 (best offer) and \$150,000 (determined by

Court) \$ 9,900.00

Disbursements (schedule attached) 1,003.50

\$10,903.50

This firm retains \$2,500.00 which was received and reported as a retainer for the settlement of tax deficiencies. This amount will be charged against fees earned under our agreement of July 28, 1954 with respect to the Income Tax deficiency proposed against you by the United States Government.

October 7, 1957

DisbursementsE. J. Brady:

7th October, 1955 Travel to Providence	\$ 35.77
18th October, 1955 Travel to Washington	50.00
14th November, 1955 Travel to Worcester	50.00
14th November, 1955 U. S. Treasury	100.00
15th December, 1955 Travel to Washington	50.00
1st January, 1956 Travel to Washington	50.00
1st February, 1956 Travel to Washington	48.00
1st April, 1956 Travel to Washington	50.00
October, 1957 Travel to Washington (2 trips)	100.28
	<u>\$ 534.55</u>

W. J. Casey:

1st September, 1955 Travel to Washington	50.00
1st December, 1955 Travel to Washington	50.00
1st March, 1956 Travel to Washington	50.00
1st April, 1956 Travel to Washington	50.00
3rd February, 1956 Travel to Washington	46.00

Disbursements, W. J. Casey (Cont'd)

Telephone calls	\$ 200.00	
Photostats	30.80	
Thermo-Fax Paper - re Stipulation	55.41	
9th May, 1956 Trial - car fare and misc.		
expenses	113.80	
Additional transcript charges	21.93	
		<u>\$ 568.95</u>
		<u>\$ 1,003.50</u>

October 19, 1956

Mr. Harry Edell
University Club
1135 16th Street N.W.
Washington 6, D. C.

Third Invoice

Per statement of May 29, 1956	\$ 1,266.18
Additional disbursements which included National Reporter System for the report of the trial	208.83
Leonard Cordes, expert witness fee paid by me.	<u>600.00</u>
	\$ 2,075.01

July 10, 1956

Mr. Harry Edell
University Club
1135 16th Street, N.W.
Washington 6, D. C.

Second Invoice

Due per statement of May 29, 1956	\$ 1,266.18
---	-------------

May 29th, 1956

Mr. Harry Edell
University Club
1135 16th Street N.W.
Washington 6, D. C.

E. J. Brady:

7th October, 1955 Travel to Providence	\$ 35.77
18th October, 1955 Travel to Washington	50.00
14th November, 1955 Travel to Worcester	50.00
14th November, 1955 U. S. Treasury	100.00
15th December, 1955 Travel to Washington	50.00
1st January, 1956 Travel to Washington	50.00
1st February, 1956 Travel to Washington	48.00
1st April, 1956 Travel to Washington	50.00
	<u>\$ 434.27</u>

W. J. Casey:

1st September, 1955 Travel to Washington	50.00
1st December, 1955 Travel to Washington	50.00
1st March, 1956 Travel to Washington	50.00
1st April, 1956 Travel to Washington	50.00
3rd February, 1956 Travel to Washington	46.00
Telephone calls	200.00
Photostats	30.80
Thermo-Fax Paper - re Stipulation	55.41
Transcript of Record 534 pages at 35¢ per page	186.90
9th May, 1956 Trial - car fare and misc. expenses	112.80
	<u>\$1266.18</u>

May 29th, 1956

Mr. Harry Edell
University Club
1135 16th Street N.W.
Washington, D. C.

Dear Mr. Edell:

A temporary girl sent a letter to you yesterday which was incomplete.

I enclose a new draft with all the documents which were referred to in the letter.

Yours,

PLAINTIFF'S EXHIBIT NO. 20

February 18, 1959

Mr. Harry Edell
 Kenwood Golf & Country Club
 Bethesda, Maryland

Dear Harry:

Now that your tax and renegotiation liabilities have been finally settled, pursuant to the decision which we got in the Tax Court on the renegotiation claim and the settlement which we effectuated with the Internal Revenue Service in New York, the fee owing to us under our agreement should be paid to us promptly. We have been carrying this case since August 1954.

When we became entitled to \$9,900 plus expenses under our renegotiation retainer, you said that you wanted to defer payment until the tax deficiency had been settled. The time is now.

Under our retainer in the renegotiation case we are entitled to the difference between \$183,000, which was the best offer made by the Justice Department, and \$150,000 determined to be excess profits by the Tax Court. This represents a saving of \$33,000 of which we are entitled to 30%, or \$9,900.

With respect to your tax obligations, we effected a settlement which resulted in savings to you as compared to the deficiency asserted by the Government, after giving effect to the renegotiation credits in the following amounts:

For 1943. . .	\$ 2,366.15
of which we are	
entitled to	\$ 709.85
For 1944. . .	\$11,641.87
of which we are entitled to	\$3,492.56
For 1945. . .	\$14,704.65
of which we are entitled to	\$4,411.40

We are sending, under separate cover, a photostat of the calculations in which the above figures were arrived at. These calculations were reviewed and approved by Laurens Williams and his associate, Kenneth Liles.

The total tax saving for the three years amounted to \$28,712.67, of which we are entitled to 30%, or \$8,613.81. Thus, the total amount which you owe us is as follows:

Pursuant to retainer

On renegotiation case . . .	\$ 9,900.00
On tax negotiations. . .	8,613.81
Disbursements on your behalf. . .	<u>1,021.95</u>
	\$19,535.76
Less: Retainer	<u>2,500.00</u>
Amount due. . .	<u><u>\$17,035.76</u></u>

Yours sincerely,

* * *

PLAINTIFF'S EXHIBIT NO. 21

May 14, 1959

Mr. Harry Edell
5601 River Road
Washington 16, D. C.

Dear Harry:

I take it you didn't get up to New York during April as you thought you would when you dropped me a note several weeks ago. How can we now best dispose of our bill for services completed in your renegotiation and tax matters?

Yours sincerely,

* * *

PLAINTIFF'S EXHIBIT NO. 22

March 31, 1959

Mr. Harry Edell
Kenwood Golf & Country Club
Bethesda, Maryland

Dear Harry:

We haven't heard a whisper from you about paying our bill. I am going to be in Washington on Thursday and will try again to get in touch with you at the Country Club.

We don't like to do this but if we don't hear anything more from you we will have no alternative but to engage an attorney in Washington to enforce our rights.

Yours sincerely,

PLAINTIFF'S EXHIBIT NO. 24POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, That I, Harry Edell, The University Club, 1135 Sixteenth St., N.W., Washington, D. C. (formerly Hotel Woodward, Broadway and 55th St., New York, N. Y.) hereby revoke all powers of attorney previously made by me with reference to the matters which are the subject of this power, and hereby make, constitute and appoint, with full power of substitution, Laurens Williams, Esq., and Kenneth H. Liles, Esq., each of 602 Ring Building, Washington, D. C., and William J. Casey, Esq., and Edward J. Brady, Esq., each of 122 East 42nd St., New York 17, N. Y., as my true and lawful attorneys in fact and in law to represent me before the Internal Revenue Service, United States Treasury Department, in connection with my federal income tax matters for the calendar years 1942 through 1946; and to request of and receive from the Internal Revenue Service, United States Treasury Department, such documents or copies thereof as I may be entitled under the law and the regulations to demand

and receive; hereby giving and granting unto said attorneys full power and authority to do and perform all and every act or thing whatsoever requisite or necessary in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof.

I further hereby make, constitute and appoint Edwin M. Appel, C.P.A., and Arthur J. Dixon, C.P.A., each of 33 Rector Street, New York 6, N. Y., as my true and lawful agents, with full power of substitution, to represent me before the Internal Revenue Service, United States Treasury Department, in connection with my federal income tax matters for the calendar year 1946.

And I hereby request and direct that all correspondence, documents, and other data in connection with the matters covered by this power of attorney be sent to me in care of my said attorney, Edward J. Brady, Esq.

Executed this 20th day of May, 1958.

/s/ Harry Edell

Witness:

/s/ Helen J. Gretz

/s/ Kathryn J. Plummer

PLAINTIFF'S EXHIBIT NO. 25

September 17, 1958

Mr. David Korr
Appellate Staff
District Director of Internal Revenue
90 Church Street
New York, New York

Re: Harry Edell

Dear Mr. Korr:

I finally got back to my desk after a three week vacation. I have re-

ceived notices of your phone calls and also have received a letter from Laurens Williams concerning the Harry Edell tax case for the years 1943-45. As soon as I receive word from Williams that tax liability for the year 1946 has been determined, I will immediately contact you so that we can close out the years of the tax-payer that we are concerned with.

I know that is getting to be a sought of cart-before-horse situation, but you realize, of course, my hands are tied in this matter. Hoping you will bear with me in this matter.

Very truly yours,

* * *

PLAINTIFF'S EXHIBIT NO. 26

UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

August 29, 1957

William J. Casey, Esquire
Hall, Casey and Robinson
122 East 42nd Street
New York 17, New York

Re: United States v. Harry Edell
(D. C. S. D. N. Y., Civil No. 60-43)

Dear Mr. Casey:

As you are undoubtedly aware, in June of 1952 when Harry Edell was represented by the law firm of Pitman and Roberts as well as Douglas M. Amann, Esquire, of 25 Broad Street, New York, an escrow agreement was executed by Mr. Edell and the Assistant Attorney General under the terms of which common stocks having a value then in excess of \$200,000 were posted as security with a bank for Mr. Edell's renegotiation indebtedness pending the conclusion of the Tax Court proceeding filed against the United States by Mr. Edell.

The escrow agreement, among other things, provided, in paragraph 5, that if the Tax Court redetermined the Edell partnership's

excessive profits in an amount less than the War Contracts Price Adjustment Board, Edell would pay to the United States the redetermined amount of excessive profits less applicable tax credits plus interest at the rate of 4% per annum from June 29, 1949 to and including March 21, 1952 (the date of entry of judgment in the above District Court proceeding awarding 4% interest) plus interest at the rate of 6% per annum from March 22, 1952 until the date of payment. Paragraph 5 also provided that Mr. Edell would make any payment becoming due according to paragraph 5 thirty days after the redetermination by the Tax Court shall have become final and not subject to appeal and after redetermination of applicable tax credit shall have been made.

As you know, the Tax Court, be decisions in accordance with its June 10, 1957 opinion, on that date ordered and determined that the Edell partnership had realized excessive profits in the respective amounts of \$26,000, \$54,000 and \$70,000 for the respective fiscal years ended December 31, 1943, December 31, 1944 and December 31, 1945. Assuming that you do not intend to make efforts to appeal the Tax Court decisions, the decisions apparently will become final not later than September 8, 1957, ninety days after the Tax Court decisions.

By letters dated August 26, 1957 from the District Director of Internal Revenue, 245 West Houston Street, New York, New York, to the Department of the Army, the Director, based on the excessive profits as determined by the Tax Court, determined that the applicable tax credits for the years 1943, 1944 and 1945 were in the respective amounts of \$7,966.44, \$28,909.38 and \$35,897.90.

Thus, in view of the language of paragraph 5 of the escrow agreement, the amounts due for the years 1943, 1944, and 1945 will be payable by Mr. Edell on or before October 8, 1957.

There is attached hereto a schedule showing the Department of the Army's computation of the total indebtedness including accrued 4% and 6% interest for each year as of August 31, 1957. The schedule also shows the daily rate of accrued 6% interest, thus enabling Mr. Edell to compute the additional 6% interest due daily after August 31, 1957.

As you know, the escrow agent was changed subsequent to 1952 to the present agent, American Security & Trust Company, Washington, D. C.

If you find you are in agreement with the figures contained in the attached schedule, we suggest that payment might most easily be made in the manner envisioned by paragraph 2 of the escrow agreement which authorizes the bank to deliver proceeds of the securities in accordance with joint instructions which it may receive from Mr. Edell and the Department of Justice. Such joint instructions might well direct the bank to sell named securities in an amount sufficient to pay the indebtedness and to make payment of such amount by check payable to the Treasurer of the United States to be delivered to the Department of Justice.

We should appreciate hearing from you in connection with the above suggestions.

Yours very truly,

GEORGE COCHRAN DOUB
Assistant Attorney General
Civil Division

By Donald B. MacGuineas
Chief, General Litigation Section

Enclosure

cc: Department of the Army
Washington 25, D. C.
Attention: Judge Advocate General

Department of the Army
Renegotiation Collection Division
Office of Director
Contract Finance
Comptroller of the Army
Washington 25, D. C.
Attention: Mrs. A. M. Clancy

Paul W. Williams, Esquire
United States Attorney
New York, New York
Attention: Harold J. Raby, Esquire
Assistant U. S. Attorney

HARRY EDELL - RENEGOTIATION INDEBTEDNESS

1943

Excessive Profits	\$ 26,000.00
Tax Credit	7,966.44
Principal debt	<u>\$ 18,033.56</u>
Interest at 4% per annum from June 29, 1949 to and including March 21, 1952 (995 days) at daily rate of \$1.97628	\$ 1,966.40
Interest at 6% per annum from March 22, 1952 to and including August 31, 1957 (1,988 days) at daily rate of \$2.96442	<u>\$ 5,893.27</u>
Total debt as of August 31, 1957	\$ 25,893.23

1944

Excessive Profits	\$ 54,000.00
Tax Credit	28,909.38
Principal debt	<u>\$ 25,090.62</u>
Interest at 4% per annum from June 29, 1949 to and including March 21, 1952 (995 days) at daily rate of \$2.74966	\$ 2,735.91
Interest at 6% per annum from March 22, 1952 to and including August 31, 1957 (1,988 days) at daily rate of \$4.12449	<u>8,199.49</u>
Total debt as of August 31, 1957	\$ 36,026.02

1945

Excessive profits	\$ 70,000.00
Tax Credit	\$ 35,897.90
Principal debt	<u>\$ 34,102.10</u>
Interest at 4% per annum from June 29, 1949 to and including March 21, 1952 (995 days) at daily rate of \$3.73722	\$ 3,718.53
Interest at 6% per annum from March 22, 1952 to and including August 31, 1957 (1,988 days) at daily rate of \$5.60582	<u>\$ 11,144.37</u>
Total debt as of August 31, 1957	\$ 48,965.00

PLAINTIFF'S EXHIBIT NO. 27In re: Harry Edell

4/21/54

Settlement Proposed by J. H.
Prentice December 16, 1953

<u>1943</u>	<u>Total</u>	<u>Non-Renego- tiable</u>	<u>Renegotiable</u>
Commissions (cash)	\$ 52,640.44	\$ 2,114.09	\$ 50,526.33
Per cent	100%	4,0161%	95.9839%
Expenses (estimated) exclusive of salary for H. Edell	15,000.00	600.00	14,400.00
Profit	37,640.00	1,514.00	36,126.00
Reasonable profit	_____	_____	<u>24,126.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	\$ 12,000.00
<u>1944</u>			
Commissions (cash)	\$112,184.71	\$ 9,533.77	\$102,650.94
Percent	100%	8.498%	91.502%
Expenses (estimated) exclusive of salary for H. Edell	20,000.00	1,700.	18,300.00
Profit	92,184.00	7,834.00	84,350.00
Reasonable profit	_____	_____	<u>27,350.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	<u>57,000.00</u>
<u>1945</u>			
Commissions (cash and unpaid accruals as of December 31, 1945)	\$216,125.90	\$37,091.93	\$179,033.97

<u>1945</u>	<u>Total</u>	<u>Non-Renego-</u> <u>tiable</u>	<u>Renegotiable</u>
Per cent	100%	17.163%	82.837%
Unallocated			
Expenses (estimated) exclusive of salary for H. Edell	25,000.00	4,300.00	20,700.00
Legal expenses (Supply Mfg. Co.) chargeable to renegotiable	6,666.67		6,666.57
Legal expenses (Wiley-Bickford- Sweet) chargeable to renegotiable	4,500.00		4,500.00
Profit	179,958.00	32,792.00	147,166.00
Reasonable profit	_____	_____	<u>33,166.00</u>
Excess profit to be eliminated subject to tax credit	_____	_____	<u>\$114,000.00</u>

PLAINTIFF'S EXHIBIT NO. 28

COMPUTATION OF ATTORNEY'S FEES BASED ON NET DOLLAR SAVINGS IN RENEGOTIATION CASE

A. Final Gross Settlement Offer By U. S. Department of Justice	
Amounted to -----	\$ 183,000.00
Less: Credit for Taxes Paid on That Amount-----	<u>- 71,104.03</u>
Net Amount Due -----	\$ 111,895.97
Add: Interest on Net Amount Due (Thru 3/21/54)-----	25,630.63
Net Cost to Defendant-----	\$ 137,526.60

B. Judgment of U. S. Tax Court Court After Trial

Amounted to ----- \$150,000.00

Less: Credit for Taxes Paid on
on that Amount----- -72,773.72

Net Amount Due ----- \$ 77,226.28

Add: Interest on Net Amount Due
(Thru 3/21/54)----- 24,390.81Net Cost to Defendant----- 101,617.09

C. Savings Obtained by Office of Attorney Casey-- \$ 35,909.51

D. Percent of Savings Due Attorney Under Fee
Agreement of August 6, 1954----- X 30%E. Dollar Amount Owed Attorney Under Fee
Agreement of August 6, 1954----- \$ 10,772.85

PLAINTIFF'S EXHIBIT NO. 32

November 21, 1955

Mr. Harry Edell
Westchester Apartments, Apt. 755B
Washington, D. C.

Dear Mr. Edell:

I have just returned to the office after being out of town for about a week, and I decided to write you a few of the things that took place on my trip to Worcester. Joe Hearn and Jack Owens are very fine gentlemen and gave me their time very willingly. Both have high regard for the work which you performed for the company, and both are willing to testify on your behalf.

I obtained a breakdown from Jack Owens concerning the amount of renegotiation business which the company did during the years 1943-1945, and the amount of non-renegotiation business which the company did during this period. The Government also obtained this same information some years ago. In regard to your contract with Brewer and Company,

it seems to me that it was back dated, that is, most likely made up a year after you were employed by the company. To refresh your memory on this matter, the contract is dated July 13, 1943 and states that you will receive \$300 a week as drawings. The actual fact of the matter is that in July, 1943 the Company paid you \$50 a week until January, 1944, then paid you \$200 a week until the middle of October. After that you received \$300 a week. There is nothing to worry about on this account, since we will be able to say that the arrangement was finally reduced to writing a year after it had been entered into. Also, in the same contract there are agencies mentioned that were not in existence as of July 13, 1943. There is no need to worry on this matter, but I just merely tell it to you so that it will not come as a shock later on.

I intend to see Prentice tomorrow, and I will write to you later on these developments.

Yours,

EJB/vm

PLAINTIFF'S EXHIBIT NO. 33

October 6, 1955

Mr. Sammuel West
792 Sterling Place
Brooklyn, New York

Dear Mr. West:

We represent one Harry Edell in a renegotiation case which the Government has brought against him. It is the Governments contention that all Mr. Edell did for certain companies was to secure government contracts connected with the war effort. It is our contention that Mr. Edell helped the production end of the companies which he represented, and also aided them in setting up proper procedure to compete in a war effort.

This office called you some time last week and was told to write you regarding the nature of the call. We would like to have you visit us at your convenience to discuss some of the things outlined in the barest details above, or if this is not convenient, we would like to have one of the associates of this office come to your place of business.

* * *

Very truly yours,

PLAINTIFF'S EXHIBIT NO. 34

BREWER & COMPANY INC.
PHARMACEUTICAL CHEMISTS

67 Union Street

Worcester 8, Massachusetts, USA

October 27, 1955

WILLIAM J. CASEY
60 East 42nd Street
New York 17, New York

Att: Mr. Edward J. Brady

Dear Mr. Brady:

I will be very willing to discuss with an associate of yours, matters pertaining to Harry Edell as they apply to work and duties that he performed while soliciting business for our company during the years 1943-1945.

I would suggest that your associate phone me the day before he plans on coming over to make certain that I have not been called out of town.

Very truly yours,

BREWER & COMPANY, INC.

/s/ Jos. C. Hearn
Sales Manager

* * *

P.S. Please note that our present address is 67 Union Street, Worcester 8, Mass.

PLAINTIFF'S EXHIBIT NO. 37

LOWENSTEIN, PITCHER, AMANN & PARR
25 BROAD STREET, NEW YORK

* * *

* * *

March 8, 1954

Mr. Harry Edell
Plaza Hotel
Fifth Avenue and 59th Street
New York, New York

Dear Mr. Edell:

In reply to your letter of March 3d I wish to advise you as follows:

The Department of Internal Revenue by 30 day letter dated August 26, 1949 proposed the following assessment of taxes against you:

Year: 1943 Deficiency - Income Tax	\$ 19,393.81
Year: 1944 Deficiency - Income Tax	50,712.85
Year: 1945 Deficiency - Income Tax	<u>105,837.63</u>
Total Additional Tax	\$ 175,944.29

The Department has, by assessment dated July 27, 1950, assessed against you a sum of \$59,211.40 being principal of deficiency in 1946 tax. Interest has been accruing on the 1946 assessment at the rate of 6% per annum from March 15, 1947.

Our office has been negotiating with the Internal Revenue Agent in an attempt to reach a compromise of your tax liability for the years 1942 through 1945 which must be adjusted before any action can be taken with respect to the tax liability for subsequent years. If the Internal Revenue Agent should be willing to allow the same sums as expenses which were allowed by the Department of Justice in their latest offer of settlement in the renegotiation matter your tax liability would be approximately as follows:

1943	\$10,280.65
1944	14,823.86
1945	15,960.32

These assessments would, of course, bear interest at the rate of 6% per annum from the respective due dates of the tax. Additionally, it may be that the Department will seek to impose penalties because of violation of the Current Tax Payment Act.

In addition to the foregoing there will exist a tax liability on the part of your brother's estate aggregating approximately \$3,000 with interest for approximately ten years at 6%.

You will understand, of course, that there is no guaranty that the Internal Revenue Department will accept the items of expense which have been allowed by the Department of Justice. In the absence of definitive advices from them, however, there is no other basis on which I can calculate your approximate tax liability.

As I advised you over the telephone, Mr. Morris Weiss who is handling this matter in the Department of Internal Revenue, has taken a short leave and it will be impossible for me to continue the discussions I am having with him until approximately two weeks from now.

If there is any further information you desire I shall be glad to furnish it to you.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By: /s/Douglas M. Amann

* * *

PLAINTIFF'S EXHIBIT NO. 38

<u>B.A.R.</u>	<u>Assessment</u>	<u>Reported Paid</u>	<u>Alleged Total Tax</u>
1943	\$ 19,393.81	\$ 1,215.59	\$ 20,609.40.
1944	50,712.85	18,390.07	69,102.92
1945	<u>105,837.63</u>	<u>23,316.80</u>	<u>129,154.43</u>
Total Assessment	\$ 175,944.29	\$ 42,922.46	\$218,866.75
After Tax Court - (Renegotiation)			
1943		\$ 16,406.52	
1944		32,907.71	
1945		<u>75,297.19</u>	
		<u>\$124,611.42</u>	
Settlement after Tax Court			
1943		\$ 14,040.37	
1944		21,265.84	
1945		<u>62,592.54</u>	
		<u>\$ 97,898.75</u>	
Difference		26,712.67	
		<u>30%</u>	
		\$ 8,013.80	

PLAINTIFF'S EXHIBIT NO. 39

Saturday, April 4, 1959

Wm. C. Casey, Atty.
 Chanin Building
 42nd St. & Lexington Ave.
 N. Y. C.

Dear Sir,

Since I did not hear from Mr. Brady on Thursday, I assume he did not get to Washington as planned. This note is to assure you I have not intended to ignore your letters.

However, due to the recent deaths of my sister and brother I have been under considerable strain but expect to be in N. Y. before the end of the month and will get in touch with you.

Yours truly,
/s/ Harry Edell

PLAINTIFF'S EXHIBIT NO. 40

Mailed to: 5601 River Road
Washington 16, D. C.

April 9, 1959

Mr. Harry Edell
c/o Kenwood Golf and Country Club
Bethesda 14, Maryland

Dear Harry:

Was glad to get your note. Ed Brady was grounded on Thursday and postponed his trip until Saturday. He tells me that he called you at the Club but you weren't there.

I am sorry that we assumed that our letters were being ignored but I am glad to have your assurance that that is not the case. You'll agree that we carried the load on this matter for a long time without getting paid and you will understand our anxiety to have this situation rectified.

I am sorry to hear about the deaths of your sister and brother.

I look forward to seeing you on your trip to New York which you expect to make sometime this month.

Yours sincerely

* * *

PLAINTIFF'S EXHIBIT NO. 47

PITTMAN & ROBERTS
ATTORNEYS AT LAW
WASHINGTON 5, D. C.

* * *

March 1, 1951

* * *

Mr. Harry Edell
Woodward Hotel
Broadway and 55th Street
New York 19, New York

Dear Mr. Edell:

Reference is made to our conversation this morning concerning your renegotiation case pending before the Tax Court.

It is understood that this form will have nothing whatsoever to do with the settlement of your income taxes presently being audited by the Collector of Internal Revenue in New York City.

We will continue our negotiations with the Department of Justice and endeavor to work out a stipulation concerning your renegotiation liability. When these conferences have been concluded, we will communicate with you directly for your approval, and if our proposal is satisfactory to you, a stipulation will be entered which will be the basis of a final order in the Tax Court which will include the amount of the excess profits due by you.

You will find enclosed a statement from Mr. Clyde B. Stovall for services rendered to date, less the retainer you had previously forwarded to him. We conferred with Mr. Stovall this morning concerning the possible additional work necessary to complete the Tax Court case and we feel that you should forward an additional \$1,500 which will be subject to the original agreement between you and Mr. Stovall, and any amount that is not necessary to the further prosecution of your case will be returned when the matter has been terminated.

As you will recall there remains a balance due of \$3,500 on our agreed fee with the firm of Pittman & Roberts, and I would appreciate your forwarding us half of this amount at the present time.

With warm personal regards, I am

Sincerely yours,
/s/ Ralph D. Pittman

* * *

PLAINTIFF'S EXHIBIT NO. 50

Lowenstein, Pitcher, Amann & Parr

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* * *

* * *

July 27, 1954

William J. Casey, Esq.,
60 East 42nd Street
New York City, N.Y.

Dear Mr. Casey:

At the request of Mr. Harry Edell I am sending to you here-
with Mr. Edell's correspondence files as follows:

Brewer & Company, Inc.	-	1943
" "	-	1944
" "	-	1945
" "	-	1946 and 1947
Wiley-Bickford-Sweet Corp.	-	1943
" "	-	1944
" "	-	1945
Colonial Knife Company	-	1943
" "	-	1944
" "	-	1945
Supply Manufacturing Co. Inc.	-	1942-1943
Atlantic Knitting Co.	-	1943, 1944 and 1945
Artex-Green Corp.	-	1943, 1944 and 1945
Dodge Textile Manufacturing Co.	-	1942-1943
William Gluckinn Inc. Co.	-	1943-1944
LMRV Manufacturing Corp.	-	1943-1944-1945

We are further enclosing a folder entitled "Classification
List Bureau of Supplies & Accounts" and a folder entitled "Blue
Prints-Colonial Knife" which were delivered to us by Mr. Edell.

We are further enclosing papers of Mr. Edell and photostats of his tax returns which we had segregated into various sub-folders for ease in working with them, as follows:

Harry Edell-	activity memo
" "	- 1943 Federal taxes
" "	- 1944 Federal taxes
" "	- 1945 Federal taxes
" "	- 1946 Federal taxes
" "	- 1947 taxes
" "	- Myrna Edell taxes
" "	- Davis Edell taxes
" "	- Partnership returns, protest, etc.
" "	- Miscellaneous tax correspondence.
" "	- Revenue Agent's Report 1943 through 1945
" "	- Dorothy Nass - brokerage account statements
" "	- Sadie Keve - brokerage account statements
" "	- Brokerage account statements
" "	- New York State taxes and miscellaneous
" "	- Bank statements
" "	- Renegotiation client's papers

We further enclose photostats of a series of letters exchanged between Pittman & Roberts and Harry Edell, relative to the charges of the firm of Pittman & Roberts and the firm of C.B. Stovall & Co. This matter, as you know, remains unresolved.

Further enclosed is a photostat of the work sheets of C.B. Stovall & Co. breaking down by client Edell's commission receipts and also segregating them as between the several various rates of commission received by Edell.

Duplicate original forms 872 relative to Mr. Edell's Federal Income tax returns for the years ended December 31, 1943, 1944 and 1945 extending the period for assessment relative to such years to June 30, 1955 are also enclosed.

You will note that many of the letters in the Harry Edell correspondence file have a lead pencil number in the lower lefthand corner. This number indicates that the FBI during their investigation

of Mr. Edell made a photostat of this letter because they considered it important to the Government's contention that Edell actually did solicit government orders, thus bringing him outside the rule (according to their contention) of the Fine case.

We are also sending you Mr. Edell's Diary for 1943 and a group of checkbooks and travel vouchers for the year 1946 which he delivered to us, together with a typewritten summary which we had made of these latter items. All of Mr. Edell's correspondence, as well as his Diary, have been examined by the FBI in connection with the renegotiation matter and additionally, the Diary has been submitted to the Internal Revenue Department in connection with the audit of his 1943 income tax return.

Will you please acknowledge receipt of the documents mentioned above by signing the duplicate copy of this letter.

Very truly yours,

LOWENSTEIN, PITCHER, AMANN & PARR

By: /s/ Douglas M. Amann

DMA:mch
Enclosures
By Hand

DEFENDANT'S EXHIBIT NO. 8

Law Office of
WILLIAM J. CASEY

* * *

* * *

August 17, 1954

Mr. Harry Edell
Hotel Mayflower
Washington, D.C.

Dear Mr. Edell:

Supplementing the letter agreement between you and me, dated July 28, 1954, I hereby make to you the following additional commitments:

1. You tell me that you are entitled to a refund of \$7,500 for overpayment of taxes in 1946 and that this amount is being withheld by the Internal Revenue Service for possible application against the tax deficiencies charged against you for previous years. To the degree that the amount of this refund is reflected in the final settlement of your tax liability for the years covered by our agreement of July 28, 1954, the percentage compensation stipulated for me in that agreement shall not apply. Thus, if the payment of additional taxes required of you should be reduced by the amount of the \$7,500 overpayment previously made, my percentage compensation will not apply to that portion of the reduction, but only to the difference between the deficiency presently assessed against you and the amount of tax liability ultimately determined for the years covered by the retainer agreement.
2. It is understood that I am not authorized to make any final settlement without your explicit approval.

Yours very truly,

/s/ William J. Casey

WJC:MG

I hereby accept the foregoing commitments as supplementary to the agreement between us, dated July 28, 1954. August 17, 1954

/s/ Harry Edell

DEFENDANT'S EXHIBIT NO. 9

October 7, 1957

Mr. Harry Edell
c/o University Club
1135 16th Street, N.W.
Washington 6, D.C.

HALL, CASEY & ROBINSON

* * *

For Professional Services Rendered	
As per our agreement -- 30% of difference between	
\$183,000 (best offer) and \$150,000 (determined by	
Court)	\$ 9,900.00
Disbursements (schedule attached)	<u>1,003.50</u>
	<u>\$10,903.50</u>

This firm retains \$2,500.00 which was received and reported as a retainer for the settlement of tax deficiencies. This amount will be charged against fees earned under our agreement of July 28, 1954 with respect to the Income Tax deficiency proposed against you by the United States Government.

DEFENDANT'S EXHIBIT NO. 10

Law Offices
HALL, CASEY, DICKLER & BRADY

* * *

* * *

* * *

February 18, 1959

Mr. Harry Edell
Kenwood Golf & Country Club
Bethesda, Maryland

Dear Harry:

Now that your tax and renegotiation liabilities have been finally settled, pursuant to the decision which we got in the Tax Court on the

renegotiation claim and the settlement which we effectuated with the Internal Revenue Service in New York, the fee owing to us under our agreement should be paid to us promptly. We have been carrying this case since August 1954.

When we became entitled to \$9,900 plus expenses under our renegotiation retainer, you said that you wanted to defer payment until the tax deficiency had been settled. The time is now.

Under our retainer in the renegotiation case we are entitled to the difference between \$183,000, which was the best offer made by the Justice Department, and \$150,000, determined to be excess profits by the Tax Court. This represents a saving of \$33,000 of which we are entitled to 30%, or \$9,900.

With respect to your tax obligations, we effected a settlement which resulted in savings to you as compared to the deficiency asserted by the Government, after giving effect to the renegotiation credits in the following amounts:

For 1943 . . .	\$ 2,366.15	
of which we are		
entitled to		\$ 709.85
For 1944	\$11,641.87	
of which we are		
entitled to		\$ 3,492.56
For 1945	\$14,704.65	
of which we are		
entitled to		\$ 4,411.40

We are sending, under separate cover, a photostat of the calculations in which the above figures were arrived at. These calculations were reviewed and approved by Laurens Williams and his associate, Kenneth Liles.

The total tax saving for the three years amounted to \$28,712.67, of which we are entitled to 30%, or \$8,613.81. Thus, the total amount which you owe us is as follows:

Pursuant to retainer

On renegotiation case	\$ 9,900.00
On tax negotiations	8,613.81
Disbursements on your behalf	<u>1,021.95</u>
	\$19,535.76
Less: Retainer	<u>2,500.00</u>
Amount due	<u>\$17,035.76</u>

Yours sincerely,
/s/ Bill Casey

WJC:bck

DEFENDANT'S EXHIBIT NO. 11

Law Office of
WILLIAM J. CASEY

* * *

* * *

May 25, 1956

Mr. Harry Edell
5601 River Road, N.W. [c/o University Club, Washington, D.C.]
Washington, D.C.

Dear Harry:

I was in Washington last Friday to finalize the financial stipulation and file it with the Tax Court. I am enclosing a copy, which breaks the stipulated net profits down by years. On this basis, the Treasury has agreed that you are entitled to compensation of \$9000 in 1943, \$21,000 in 1944 and \$30,000 in 1945.

I have your suggestions about the brief, and you can be sure that I will go over it in draft form with you before it is filed. You understand that in the preparation of the brief, we are confined to those things which were put on the record, so that we can't shove additional evidence into the brief.

I am enclosing a check for the long distance charges incurred by me in the Raleigh Hotel. There is no sense in my giving you a check for the room and restaurant charges, and then billing them back to you as part of the expenses of handling the trial.

I will need money to pay for the services of our experts and also to reimburse us for expenses in traveling to Worcester, Providence and Washington in handling this matter. I enclose a bill for these expenses, and as soon as I get a bill from Porter and Cordes I will bill you for that amount.

Yours,

WJC-jh
Enclosures

DEFENDANT'S EXHIBIT NO. 14

TREASURY DEPARTMENT
Internal Revenue Service

Office of
Internal Revenue Agent in Charge
2nd N.Y. Division
90 Church Street, N.Y.C. - 7

August 26, 1949

Mr. Harry Edell,
66 Leonard Street,
New York 13, N.Y.

Dear Mr. Edell:

I enclose a copy of the report of the examination of your income-tax returns for the years shown below. After consideration by this office, the following adjustments of your tax liability appears to be warranted, for the reasons stated in the report:

Year: 1943	Deficiency - Income Tax	\$ 19,393.81
Year: 1944	Deficiency - Income Tax	50,712.85
Year: 1945	Deficiency - Income Tax	<u>105,837.63</u>
	Total Additional Tax	\$175,944.29

IF YOU AGREE to this adjustment, the enclosed form of waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and to stop the accumulation of interest. Such interest will cease 30 days after the receipt of the executed form, or upon the payment of the additional tax to the collector, whichever occurs first.

If you desire to make immediate payment of the additional tax without awaiting assessment, you should forward your remittance to the Collector of Internal Revenue at Custom House, New York 4, N.Y., enclosing this letter, or a copy thereof. Interest on the additional tax should be included in your remittance, computed at the rate of 6 percent per annum from the due date of the first installment to the date of payment.

IF YOU DO NOT AGREE to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you prior to final determination of any deficiency against you. This letter is not a final notice of deficiency, and this office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to pay the additional tax to the collector of internal revenue or to file with this office within the 30-day period mentioned either a waiver on the enclosed form or a written protest,

final determination of your tax liability will be made and a notice of deficiency will be sent you in accordance with the provisions of law applicable to the assessment and collection of income and profits-tax deficiencies.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

/s/ C.R. Krigbaum
Internal Revenue Agent in Charge

Enclosures:

Report of examination.
Form of waiver.
Form of acknowledgment.

DEFENDANT'S EXHIBIT NO. 15

U.S. TREASURY DEPARTMENT
Internal Revenue Service
Regional Commissioner
New York 7, N.Y.
90 Church Street

Mr. Harry Edell
c/o Kenwood Golf and Country Club
5601 River Road
Washington 16, D.C.

Dear Mr. Edell:

Your income tax liabilities for the taxable years ended December 31, 1943, December 31, 1944 and December 31, 1945 were made the subject of hearings before this office with your representative.

Your proposal for settlement of the tax controversy as evidenced by the signed agreement filed with this office has been accepted.

There is enclosed a statement of the tax liabilities reflecting the conclusions reached. The deficiencies indicated therein bear interest as provided by law.

A copy of this letter has been mailed to your representative, Laurens Williams, Esq., Ring Building, 18th and M Streets, N.W., Washington 6, D.C., in accordance with the authority contained in the power of attorney executed by you and on file with the District Director of Internal Revenue, Lower Manhattan District.

It is important that any inquiry or reply be addressed to the Associate Chief, Appellate Division, (symbols Ap;NY;DLK) Room 807, Federal Office Building, 90 Church Street, New York 7, New York.

Very truly yours,

/s/ Ellis L. Jackson
Associate Chief, Appellate Division

Enclosure:

Carbon copy of statement

AUDIT STATEMENT

In re: Mr. Harry Edell
c/o Kenwood Golf and Country Club
5601 River Road
Washington 16, D.C.

Preliminary letter dated August 26, 1949

TAX LIABILITY FOR TAXABLE YEARS ENDED
DECEMBER 31, 1943, DECEMBER 31, 1944
AND DECEMBER 31, 1945

INCOME TAX

<u>Year</u>	<u>Deficiency</u>
1943	\$14,040.37
1944	\$21,265.84
1945	<u>\$62,592.59</u>
Total	<u>\$97,898.80</u>

Consent Forms 872 executed June 4, 1957 are on file extending the statutory period for assessment for the taxable years ended December 31, 1943, December 31, 1944 and December 31, 1945 to June 30, 1958.

The conclusions of the Appellate Division, New York City Region, in connection with your proposal for settlement of the tax in controversy are the basis for the revised tax liability shown in this settlement.

TAXABLE YEAR ENDED DECEMBER 31, 1943

Adjustment to Net Income

Net income as shown in preliminary letter dated August 26, 1949 (Revenue Agent's Report dated July 25, 1949)	Income Tax <u>Net Income</u>	Victory Tax <u>Net Income</u>
	\$47,120.61	\$47,148.11

Adjustment:

(a) Income from business	<u>32,052.67</u>	<u>32,052.67</u>
Net income as corrected	\$15,067.94	\$15,095.44

Explanation of Adjustment

(a) Income reduced \$32,052.67

RECAP - HARRY EDELL

12/17/58

<u>1943</u>	<u>Deficiency</u>	\$14,040.37	
	Paid 10/24/58	<u>10,000.00</u>	
	Unpaid Balance		\$ 4,040.37
	<u>Interest</u>		
	Interest on \$10,000 payment	\$8,764.79	
	Interest on balance to 12/15/58	<u>3,575.73</u>	
	Unpaid Interest 12/15/58		\$12,340.52
	Total Unpaid 12/15/58		\$16,380.89

<u>1944</u>	<u>Deficiency</u>	\$21,265.84	
	Paid 10/24/58	<u>10,000.00</u>	
	Unpaid Balance		\$11,265.84
	<u>Interest</u>		
	Interest on \$10,000 payment	\$8,164.79	
	Interest on balance to 12/15/58	<u>9,294.32</u>	
	Unpaid Interest 12/15/58		\$17,459.11
	Total Unpaid		\$28,724.95

<u>1945</u>	Deficiency	\$62,592.59	
	Paid 10/24/58	<u>30,000.00</u>	
	Unpaid Balance		\$ 32,592.59
	Interest		
	Interest on \$30,000 payment	\$22,694.38	
	Interest on balance to 12/15/58	<u>\$24,933.33</u>	
	Unpaid Interest 12/15/58		<u>\$47,627.71</u>
	Total Unpaid		<u>\$80,220.30</u>
<u>Less</u>	Credit for 1946 Overpayment per Rev. Agt.		
	1947 Principal	\$6104.90	
	Interest to 12/15/58	4251.93	
	1950 Payment	500.00	
	Interest to 12/15/58	<u>250.00</u>	
	Total		<u>\$11,106.83</u>
	Balance		<u>\$69,113.47</u>

Total Unpaid Principal of Deficiencies:

1943		\$ 4,040.37
1944		11,265.84
1945		\$32,592.59
Credit	<u>6,604.90</u>	<u>25,987.69</u>
(Which will bear interest to 1/4/59, and, if not paid on Demand, will thereafter bear interest, at daily rate of .001643 which is \$7.86988284)		\$41,293.90

Total Unpaid Interest as of 12/15/58

1943		\$12,340.52
1944		17,459.11
1945		\$47,627.71
Credit	<u>4,500.93</u>	<u>43,126.78</u>
		\$72,926.41

DEFENDANT'S EXHIBIT NO. 16

	1	2	3	4
<u>Year</u>	<u>Proposed Deficiency</u>	<u>Final Settlement</u>	<u>Repaid as a Result of Renegotiation</u>	<u>Cash Loss</u>
1943	\$19,393.81	\$14,040.37	\$32,052.67	(\$26,699.23)
1944	50,712.85	21,265.84	35,935.01	(6,488.00)
1945	105,837.63	62,592.59	47,192.85	(3,947.81)
Totals	\$175,944.29	\$97,898.80	\$115,180.53	(\$37,135.04)

SUMMARY

Col. 1	-	Proposed Deficiency	\$175,944.29	
Less: Col. 3	-	Amount repaid to U.S. Government	<u>115,180.53</u>	\$60,763.76
Less: Col. 2	-	Tax Actually paid (Final Settlement)		<u>97,898.80</u>
Balance Col. 4	-	Cash Loss to client		(\$37,135.04)

Explanation of Columns:

- Column #1 - Proposed Deficiency Income Tax, as per revenue agent's report dated 8/26/49
- Column #2 - Final Settlement Income Tax - as per revenue agent's report dated 12/16/58
- Column #3 - Amount refunded as a result of renegotiation - see adjustments revenue agent's report dated 12/16/58.

ACTUAL INCOME TAX SETTLEMENT AND
SETTLEMENT PROPOSED BY PRENTICE TO AMANN
PER LETTER 3/8/54

Final Settlement Income Tax	\$97,898.80
Less Proposal Re: Amann's letter dated 3/8/54	<u>41,064.83</u>
Additional Taxes Paid	\$56,833.97
Less: Savings in renegotiation	<u>33,000.00</u>
Additional cash paid over Prentice proposal	\$23,833.97

[Filed February 19, 1963]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM J. CASEY)	
)	
Plaintiff)	
)	
v.)	Civil Action No. 2788-59
)	
HARRY EDELL)	
)	
Defendant)	

JUDGMENT

This cause came on to be heard by the Court upon the complaint and answer, and after hearing testimony and taking evidence adduced by the parties and having heard arguments of respective counsel, and the Court having made Findings of Fact and Conclusions of Law, it is by the Court this 19th day of February, 1963,

ADJUDGED, ORDERED AND DECREED as follows:

1. That the plaintiff is entitled to have and recover of and from said defendant the sum of \$16,017.30, together with interest at 6% per annum from February 25, 1959 to date of payment, and have execution for said sum as at law.

2. That defendant shall satisfy all court costs of this proceeding.

/s/ Burnita Shelton Matthews
Judge

[Filed February 19, 1963]

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Findings of Fact

The Court makes the following findings of fact:

1. The plaintiff WILLIAM J. CASEY is a member of the Bar of the State of New York, various United States District Courts and the Tax Court of the United States. He is also enrolled to practice as an attorney before the Internal Revenue Service, and is a recognized authority and text writer on federal taxation and on the so-called Renegotiation Act.

2. The defendant HARRY EDELL solicited and procured Government contracts during the years 1943, 1944 and 1945 for some eight different Government contractors and subcontractors. He was a knowledgeable negotiator, experienced in contract terminology and skilled in the ways of business and in the making of agreements generally.

3. The Court adopts, for the purpose of these Findings of Fact, certain findings of fact which were made by the Tax Court of the United States in Edell v. United States, 28 T.C. 601 (June 10, 1947), as follows:

(a) "... Edell and his brother [Lewis] created a partnership on December 22, 1942" (28 T.C. at 603).

(b) "During the years involved, 1943-1945, and also during 1946, practically all of the work done for the Edell partnership was performed by Harry Edell; Lewis's services were minor, if not negligible." (28 T.C. at 605)

(c) "For the years 1943, 1944 and 1945, the partnership filed Federal partnership returns on a cash basis, in which were reported the amounts received by the partnership from various ones of the companies . . . as follows:

	<u>Gross Receipts</u>
1943	\$ 59,392.54
1944	142,546.08
1945	<u>161,539.91</u>
Total	\$363,478.53" (28 T.C. at 606)

(d) "... The services which Edell offered the companies included obtaining information from Government representatives, preparing bids, and carrying on dealings on their behalf, as their representatives . . ." (28 T.C. at 607)

(e) "Under each agreement which each of the eight companies, the partnership was to be paid, and was in fact paid, commissions varying from 2-1/2 per cent to 5 per cent of the amounts of sales by the companies to the Government under Government contracts and subcontracts . . ." (28 T.C. at 608)

(f) "Edell, acting for petitioner, procured at least one Government contract, or subcontract, for each of the eight companies . . . He carried on a number of activities in soliciting and procuring such contracts, acting as a representative of the companies. He advised his principals to bid on Government contracts. He also negotiated the terms of contracts between his principals and Government agencies . . ." (28 T.C. at 609)

4. In December 1953, the defendant HARRY EDELL met the plaintiff WILLIAM J. CASEY and outlined two problems that he had with the United States Government, consisting of an alleged income tax deficiency and of an excessive war profits claim against Mr. Edell which had been appealed by him to the Tax Court but which had been reduced to judgment in the amount of \$227,449.54 by the United States District Court for the Southern District of New York (United States v. Edell, 15 F.R.D. 382, 383).

5. Subsequently Mr. Casey was informed that the United States was the respondent to a petition which had been filed in the Tax Court in 1949 on behalf of Mr. Edell by the Washington law firm of Pittman & Roberts. This petition sought to have the Tax Court declare that Mr. Edell was not subject to the War Price Adjustments Act (50 U.S.C.A. Appendix § 1191) or, in the alternative, that the determination previously made as to the amount of excessive profits was incorrect. Mr. Casey was informed that the Department of Justice had offered to settle the excessive profits matter by a determination that Mr. Edell had received excessive profits in the aggregate sum of \$183,000 for the years 1943, 1944, and 1945 (\$12,000 for 1943; \$57,000 for 1944; and \$114,000 for 1945) [Plaintiff's Exhibits 2, 27]. Mr. Casey was also informed that the Internal Revenue Service had assessed a deficiency against Mr. Edell for additional taxes due for 1943, 1944, and 1945 in the amount of \$175,944.29.

6. Mr. Casey refused to become sole counsel until prior counsel, Mr. Amann, was satisfied to have him do so, and until Mr. Amann's fee was paid and the papers of Mr. Edell were sent by Mr. Amann to Mr. Casey. Mr. Amann did not send the papers to Mr. Casey until July 27, 1954 [Plaintiff's Exhibit 50] and did not withdraw from the case until July 21, 1954 [see Plaintiff's Exhibit 4].

7. On July 28, 1954, Mr. Edell and Mr. Casey entered into two written fee agreements. One agreement provided for a \$2,500 retainer fee plus 30% of the difference between the proposed tax deficiency and the final settlement, together with such costs as might be awarded in any action concerning tax deficiencies assessed against Mr. Edell for the calendar years 1943, 1944, 1945, 1946, and 1947, but provided that no fee should be based on any tax reduction resulting from any renegotiation refund paid by Mr. Edell to the Government.

The other agreement entered into between the parties on this date provided that Mr. Casey's fee on the renegotiation matter should be 30% of the difference between the Justice Department offer of \$138,000 and the final settlement of the dispute. The figure of \$138,000 in this agreement was an error, and it should have read \$183,000, which was the lowest Justice Department offer.

8. On August 6, 1954, Mr. Casey sent a letter to Mr. Edell indicating that the figure of \$138,000 used in the renegotiation fee agreement of July 28, 1954, was erroneous and should have been \$183,000. This letter also enclosed a corrected fee agreement for the renegotiation case in language identical to the original agreement of July 28, 1954, except changing the figure used as a basis for calculating the fee from \$138,000 to \$183,000. Mr. Edell knowingly and intentionally signed and returned this amended agreement using the \$183,000 figure.

9. In the renegotiation case Mr. Casey was authorized as counsel for Mr. Edell to enter into a stipulation with the Government regarding the defendant's annual expenses for the years in question, and such stipulation was made with the prior knowledge and consent of Mr. Edell. After the trial of the renegotiation case, the United States Tax Court, in an opinion by Judge Herron rendered approximately one year after the case was heard, decided that Mr. Edell had received as excessive profits for the years 1943-1945 the sum of \$150,000 (\$26,000 in 1943; \$54,000 in 1944; and \$70,000 in 1945) as contrasted with the best settlement offer of the Justice Department of \$183,000 for the years

1943-1945 [Plaintiff's Exhibit 2]. As a result of this judgment Mr. Casey became entitled to a fee of \$9,900, which is 30% of \$33,000, or the difference between the ultimate court judgment and the lowest settlement offer of the Justice Department. Mr. Casey agreed to await payment of this fee until the tax matter was also settled.

10. As a result of the Tax Court findings and judgment in the renegotiation case, the amount of the tax deficiency claimed for the relevant years by the Internal Revenue Service, after adjusting for the Tax Court renegotiation judgment, was reduced from an aggregate of \$175,944.29 to an aggregate of \$124,611.42. Mr. Casey made no charge and claimed no fee for this reduction.

11. Mr. Casey by his efforts obtained a reduction in the aggregate tax deficiency of Mr. Edell for the years 1943, 1944 and 1945 from \$124,611.42 to \$97,898.75, or a tax saving of \$26,712.67. Mr. Casey became entitled to his tax fee of 30% of this saving of \$26,712.67, or \$8,013.80. The \$97,898.75 tax settlement was approved by Mr. Edell.

12. At the request and direction of Mr. Edell, Mr. Casey did not handle the tax deficiencies for the years of 1946 and 1947, nor did he ever charge a fee for such years.

13. Mr. Casey incurred expenses amounting to \$603.50 reasonably required in handling Mr. Edell's legal matters, for which he is entitled to reimbursement.

14. Mr. Edward Brady, who was an attorney experienced in this field of law and who was an employee of Mr. Casey, necessarily expended 740 hours in working on Mr. Edell's legal problems under the direction of Mr. Casey. Mr. Brady's time was worth \$20 per hour, and the reasonable value of his services for Mr. Edell on a quantum meruit basis amounts to \$14,800. Mr. Casey necessarily expended 325 hours in working on Mr. Edell's problems. Mr. Casey's time was worth \$60 per hour, and the reasonable value of his services for Mr. Edell on a quantum meruit basis was \$19,500. The total value on quantum meruit of services rendered by Mr. Brady and Mr. Casey for Mr. Edell amounts to \$34,300.

15. The original intent of both Mr. Casey and Mr. Edell was to enter into a renegotiation fee agreement based on the best Justice Department offer of settlement as the basis from which savings were to be calculated, and such best offer was in fact \$183,000 and not \$138,000. The change in the agreement, made only nine days after the original error, was not unfair or unreasonable, nor a result of duress or fear on Mr. Edell's part.

16. The plaintiff performed legal services in accordance with his fee agreements with the defendant, and as of Feb. 25, 1959 there was owing to him the following:

\$9,900.00 for the savings effected on the renegotiation claim; \$8,013.80 for the reduction of the tax deficiencies for the years 1943, 1944, and 1945; and \$603.50 for expenses incurred by plaintiff; or a total of \$18,517.30.

On the above debt of \$18,517.30 the plaintiff is entitled to a credit of \$2,500.00 for the previously paid retainer fee in that amount.

Therefore, the net amount due plaintiff for his services and expenses is the difference between \$18,517.30 and \$2,500.00 or \$16,017.30.

Interest is due at 6 per cent per annum on \$16,017.30 from February 25, 1959 to date of payment. Plaintiff is entitled to judgment upon the foregoing indebtedness of the defendant.

Conclusions of Law

The Court makes the following conclusions of law:

1. There was a binding and valid fee agreement entered into by and between the defendant and the plaintiff on July 28, 1954, by which the plaintiff was to receive 30% of whatever savings he effected in the tax deficiencies assessed by the Government against the defendant for 1943, 1944, 1945, 1946 and 1947, after recomputing said tax deficiencies to reflect the result of any amounts taken out of the income of the defendant by renegotiation of the excessive profits received by him during such years.

2. The plaintiff was either under no obligation under the agreement of July 28, 1954, to handle the defendant's tax problems for the years 1946 and 1947, or the plaintiff was relieved of any such obligation he might have had by the directions and instructions of the defendant. The fact that the plaintiff did not handle the tax problems of the defendant for the years 1946 and 1947 had no legal effect on the fee owed to the plaintiff by the defendant for services performed by the plaintiff in reducing the defendant's tax deficiencies for the years 1943, 1944, and 1945.

3. On July 28, 1954, the plaintiff and the defendant entered into an agreement whereby the plaintiff was to receive 30% of the savings from the best Justice Department settlement offer, which by error was stated in the agreement to be \$138,000. This agreement was bilaterally corrected on August 6, 1954 to reflect the true intent of the parties by inserting the figure \$183,000 instead of the figure \$138,000. This correction was fairly made, it was executed by the defendant with full knowledge of what he was doing, and he was under no undue influence, duress or pressure from the plaintiff so to do.

4. The legal rate of interest both in the District of Columbia and in the State of New York is 6% per annum on obligations where the rate of interest is unspecified.

5. The plaintiff effected savings on the renegotiation claim by the difference between the Justice Department's best settlement offer of \$183,000 and the judgment of the Tax Court for \$150,000, and is entitled to a fee of 30% of such difference, or \$9,900.

6. The plaintiff obtained reductions of the tax deficiencies asserted against the defendant for the years 1943, 1944 and 1945 in the amount of \$26,712.67, which settlement the defendant approved, and the plaintiff is entitled to a fee of 30% of such reductions, or \$8,013.80.

7. The plaintiff incurred expenses on behalf of the defendant in the amount of \$603.50 and is entitled to reimbursement therefor.

8. The defendant is entitled to deduct the previously paid retainer fee of \$2,500 as a credit against the aforesaid \$18,517.30 indebtedness to the plaintiff.

9. On a quantum meruit basis the reasonable value of the services rendered by the plaintiff on behalf of the defendant amounts to \$34,300.

10. There is owing to the plaintiff by the defendant the sum of \$16,017.30 as of February 25, 1959, said sum being the total of the two fees of \$9,900.00 and \$8,013.80 respectively plus the \$603.50 expenses (or \$18,517.30), minus the retainer fee of \$2,500 previously paid by defendant, plus interest at 6% per annum from February 25, 1959 until paid together with the costs of this action, and the plaintiff should have judgment therefor.

/s/ Burnita Shelton Matthews
Judge

[Filed February 28, 1963]

NOTICE OF APPEAL

Notice is hereby given this 28th day of February 1963 that the defendant Harry Edell hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment entered on the 19th day of February 1963 in favor of William J. Casey, Plaintiff against said Harry Edell, defendant.

HANNAN, CASTIELLO & BERLOW

By: /s/ Ralph F. Berlow
Attorney for Defendant

